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### MENOMINEE CONSTITUTION HANDBOOK

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## INTRODUCTION TO MENOMINEE CONSTITUTION HANDBOOK

An Indian tribe can be defined in two ways: (1) as a society of people bound together by a common history and culture, and (2) as a government. The Menominee Termination Act and the Menominee Restoration Act both affect only the status of the Menominee Tribe as a government recognized as such by the United States. By the Termination Act, the United States declared that it no longer recognized the Menominee Tribe as a government. Then, eighteen years later, by the Restoration Act, the United States reversed itself and declared that it again recognized the Menominee Tribe as a government. In order to permit a resumption of relationships between the Menominee Tribe and the United States Government, the Restoration Act authorized the Secretary of the Interior, upon request of the Menominee Restoration Committee, to conduct an election to determine the Tribe's constitution, that is, its form of government. The Act sets the deadline for such election as "within 60 days after final certification of the tribal roll." The Menominee Restoration Committee has been elected to draft the Menominee Constitution.

This handbook has been compiled to aid the Menominee Restoration Committee in its job of drafting a constitution for the Menominee Tribe. It is intended to present information and ideas, and to raise considerations so that the Committee may make its decisions advisedly. Generally, the handbook is planned, first to present a comprehensive view of government as a whole; second to present information on forms of government, their strengths and weaknesses; and third, to summarize information and present examples of provisions generally included in constitutions. Based upon decisions of the Committee, sections of the proposed constitution can be drafted and coordinated into a complete document.

Most of the possible constitution provisions will be based upon the form of government decided upon by the Committee. Information regarding specific kinds of provisions will be added after the decision as to the form of government. In addition, questions may arise in the course of discussion which were not anticipated when this handbook was originally compiled and which call for further research. For these reasons, the handbook is in looseleaf form so that information can be added as needed.

The job of drafting a constitution is the job of establishing a government. It is a difficult job. Like an architect of a building who decides upon the right framework and then decides upon the many details of the inner structure, the Committee must decide on a framework of the government and then it must decide on the many details or constitution provisions which will be the inner structure of the government. Again, like an architect planning a building, the Committee must at all times consider how its plan will operate in reality. Thus, the job requires a great deal of foresight and imagination, as well as time to make all the many detailed decisions required. Hopefully, the Committee's efforts will ultimately result in a government which will serve the Menominee Tribe well for a long time to come.

## I. GENERAL BACKGROUND

### A. The Importance Of A Constitution To The Sovereignty Of Tribal Governments.

The term "tribal sovereignty" means the extent of a tribe's ability to exercise the powers of self-government. Tribal sovereignty always faces two dangers, either of which can severely limit its scope or even destroy it: first, external interferences in the tribe's right of self-government, in the form of federal restrictions on the sovereign powers of tribes or in the form of imposition by state and local governments of their powers; and second, the failure of the tribe internally to establish a government capable of exercising fully and fairly the powers of self-government.

Indian tribal governments have historically been protected against the first danger to tribal sovereignty - interference by outside governments - by the laws of the United States. The central principle of federal Indian law is that Indian tribal governments retain all the powers of a sovereign government except as those powers have been expressly limited by the laws of the United States. However, a tribal government does not receive the protection of federal laws unless it is recognized by the United States as a government entitled to such protection. The experience of termination has shown that without the protection of federal laws, tribal governments and tribal sovereignty are not likely to survive amidst the stronger state and local governments. Thus, federal recognition of a tribal government grants to the tribe federal protection of its right to tribal sovereignty; that is, the right to exercise full powers of self-government except as limited by federal law. The Menominee Restoration Act restored federal recognition and protection to the Menominee tribal government.

The second danger to tribal sovereignty - the failure of a tribe to establish a government capable of exercising fully and fairly the powers of self-government - is probably a greater danger than the first because it occurs gradually, without the drama which accompanies the sudden impact of the passage of a federal law. Therefore, it is not as easily recognized as the first danger.

This second danger to tribal sovereignty results when two situations are allowed to occur in the tribe's government. First, when a tribal government is restricted by the constitution in its authority to exercise the powers of tribal government, it cannot fully serve the needs and wants of the tribal people. Inevitably, services which are needed but which the tribal government cannot provide will be provided by other governments. If the federal government provides them, the tribal government loses one of its most important reasons for existence and thus a great deal of its importance to the tribal people. If the state and local governments provide services, they thereby establish claim to the gratitude and loyalty of the tribal people, as well as a claim that certain duties are owed by the tribal people to that government in return for the services provided. Thus, to the extent the constitution allows external governments to furnish services

to the tribe which the tribal government could furnish if it were so authorized, it diminishes the tribe's sovereignty - the ability of the people to govern themselves.

Second, tribal people are likely to become dissatisfied and disrespectful of a tribal government that is not respectful of what the tribe considers to be basic rights of the tribe and of its members. When this situation occurs to any great extent, internal disorder may result which is an open invitation to outside governments to interfere in tribal self-government for what those governments believe to be the good of the people.

Indian tribes can, in part, protect themselves from this second danger to tribal sovereignty by drafting and adopting a constitution designed to permit the fullest possible exercise of tribal powers of self-government, while providing the fullest possible protection for the people against misuse of that power and against government infringement on rights of individual members and the tribe.

In conclusion, the Menominee constitution is an important document because it is the basic document which can make tribal sovereignty a reality in the daily lives of the Menominee people. It can make it possible for the tribe to exercise the full scope of its sovereign powers of self-government to serve the needs and wants of the tribal members, and it can assure the tribal members that their government will be responsive to their will and fair in its dealings with them.

## B. Government By Constitution - Basic Principles And Guidelines.

### 1. The Role of Government.

It is generally stated that people establish governments for two basic purposes: The first purpose is to enable a group of people to resolve their differences, and to find acceptable solutions to their common problems so that the people can live together as a community (or as a tribe) in peace and security. This is the political function of government. The second purpose for establishing a government is to provide certain services. For example, police protection, fire protection, and recreation can be provided by a government more economically or effectively than by individuals or private organizations. Other services, such as sewage disposal, zoning, licensing or public health protection, are provided by government because individuals or private organizations cannot or have no authority to provide the services. This is the service function of government. Thus, a government should be planned to perform both the political and the service purposes as well as possible.

To enable the government to accomplish these purposes, the people grant to the government those powers which they believe to be necessary. The powers may be broad in scope, thus giving the

government much flexibility to respond to the needs of the group of people; or, the powers may be enumerated and narrowly defined, thus limiting possible abuses of power, but also limiting the flexibility of the government to respond to the needs of the people.

Powers granted to the government are exercised by means of laws. But laws are not effective until two and sometimes three of the following actions are taken:

- (1) The law is enacted;
- (2) The law must sometimes be interpreted or clarified; and
- (3) The law is enforced or put into effect.

Each of the above three actions is a power in itself because each is a necessary step to the exercise of governmental powers. If one unit of government is granted the authority to take all three of the above actions, that unit in effect has all the authority it needs to exercise all governmental powers. The fear that such complete authority in one unit of government may lead to great abuse of power has in many instances persuaded people to divide their government into more than one unit each having authority to perform one, or at the most, two of the above three actions. The most obvious example of this is the United States Constitution which has three branches, each granted the authority to perform one of the above three actions: Congress enacts laws, federal courts interpret them, and the President's office enforces them. Many smaller governments, such as those of cities, which possess lesser powers than the government of the United States, are governed by a council which possesses the authority to both enact and enforce laws. Many tribes also have councils with this dual authority.

## 2. The Role of the Constitution.

A constitution is the basic plan for a government. It contains the essential parts of the plan which, in the judgment of the people, will best carry out the purposes for which the government is established.

Generally, a constitution should do the following:

- (1) Establish a government which responds to and reflects the will of the people;
- (2) Establish the structure by which the powers granted to the government can be best exercised for the welfare of the people; and
- (3) Establish protections for the people against misuse of power by the government.

It is not the role of the constitution to attempt to resolve all the current problems of society. That is the role of the government once it is established by the constitution. The government will be in a much better position to study the problems of the community and to decide upon the best solutions to them. The government will also be in a better position to repeal or revise those solutions, if they are not working. And finally, the government will be able to respond much more quickly to resolve the changing problems of the community.

Thus, in addition to establishing the basic plan or structure of the government, the constitution should include only laws which are intended to be permanently binding on the government or on the people. Such laws would include those which guarantee certain fundamental and basically unchanging rights of individuals and of the tribe, such as freedom of speech and religion, and the right to prevent sales of tribal land. Such rights will thus have the kind of protection granted to provisions of a constitution in that usually constitutions are difficult to change.

## II. STRUCTURING A FORM OF GOVERNMENT

### A. Introduction.

When structuring a form of government, the Committee should judge various forms as to how well, in their judgment, that form will promote the three functions which a whole plan of government - that is, the whole constitution - should ultimately accomplish. That is, (1) will the form promote government responsiveness to the people's will; (2) will it promote efficient and effective government services to the people; and (3) will it make it difficult for government officials to misuse the power of government to the injury of the Tribe or to the unfair advantage of individual members?

To aid the Committee in judging forms of government, the first section of this Part will discuss the strengths and weaknesses of five general forms of government, as well as the pre-termination Menominee form of government. There is also included three different forms of tribal governments along with the constitutions that created them for the further reference of the Committee.

The second section suggests, in light of the preceding discussion, several specific considerations in choosing a Menominee form of government.

### B. General Background.

#### 1. Five General Forms Of City Government - Their Strengths And Weaknesses.

There is no one form of government that is the "best" form. Any general form is just that - general - and must be adopted to meet the needs of the particular community and to fit the conditions existing in that community.

There has never been, to our knowledge, any studies of the various forms of tribal governments. Thus, there exists no information upon which to generalize as to forms of tribal government. There is no study which compares strengths and weaknesses of the various forms of tribal government, or which traces and explains new trends in tribal forms of government.

However, there have been such studies of the various forms of municipal government in this country. And in the absence of studies of tribal governments, it should be helpful to consider the conclusions of the studies on municipal forms of government. Municipal government and tribal government are in many ways comparable. Much of the comparison between cities and tribes stems from the fact that many cities, like many tribes, including the Menominee Tribe, have small populations. (The Menominee Tribe is probably now around 3,000 people in population.) Thus, small cities, like tribes, may be faced with political factionalism based upon personalities, rather than issues. Small cities, like

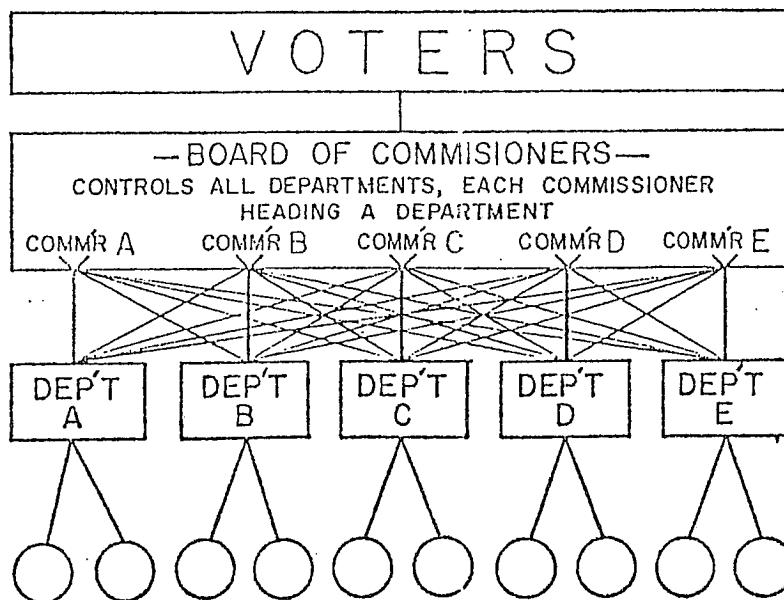
tribes, may find themselves without sufficient funds to provide the services they would like to provide and to pay good people to run the government on a full time basis.

Finally, any group of people forming a government are faced with the problem of planning a government so that those who make the decision are responsive to the will of the people (the political purpose of government), and so that the services provided and the programs established by the government are administered fairly and efficiently (the service purpose of government). Studies have generally concluded that very rarely can one find a person who is both a good policy maker and also a good administrator of policy. This problem is especially troublesome for small cities and tribes because not only is there a limited number of people from which leaders are drawn, but also political pressure is more easily placed on the policy makers in a small community by all sorts of special interest groups.

Thus, in forming their governments, small tribes, like the Menominee Tribe, face problems similar in many important respects to problems faced by a small city. Because of this similarity between cities and tribes, it should be useful to study the conclusions of various studies on forms of city government and the strengths and weaknesses of each form. Therefore, the next section will set forth the strengths and weaknesses of five general forms of city governments.

a. Commission Form.

### COMMISSION FORM





A typical commission plan of government provides for five commissioners, elected at-large by the voters, to serve as a legislative and administrative body. The board of commissioners generally control all administrative departments within the city, with each commissioner heading a particular department.

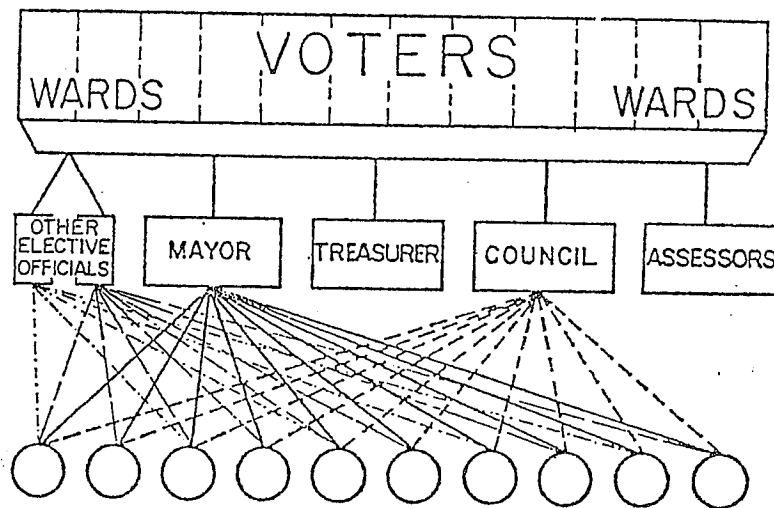
This form of government has, for several reasons, been abandoned by an increasing number of municipalities in recent years.

- (1) Commissioners, though good policymakers, are commonly not good administrators. There is no distinction in the plan between the policy-making function of government and the administrative function.
- (2) There is usually no single executive to coordinate activities of the various departments and to accept responsibility for administrative decision-making. Thus, this form promotes "buck-passing," and voters at the polls do not know who to blame for bad government or who to praise for good government.
- (3) The commission government often fails to provide sufficient checks within itself to control spending, since the officials who appropriate funds are the same officials who spend them. If the commissioners are politically ambitious, it is inevitable that each commissioner will ask for as much as he can get, even if the overall good of the government demands otherwise.

The only advantage to this form of government, if it is properly termed an advantage, is that it is simple.

b. Weak Mayor-Council Form.

WEAK MAYOR-COUNCIL FORM



This form has also been discarded by many cities in recent years. It is characterized by a major elected by the voters, an elected council which confirms departmental appointments by the mayor, separately elected department heads, and administrative boards which are either elected or appointed for overlapping terms.

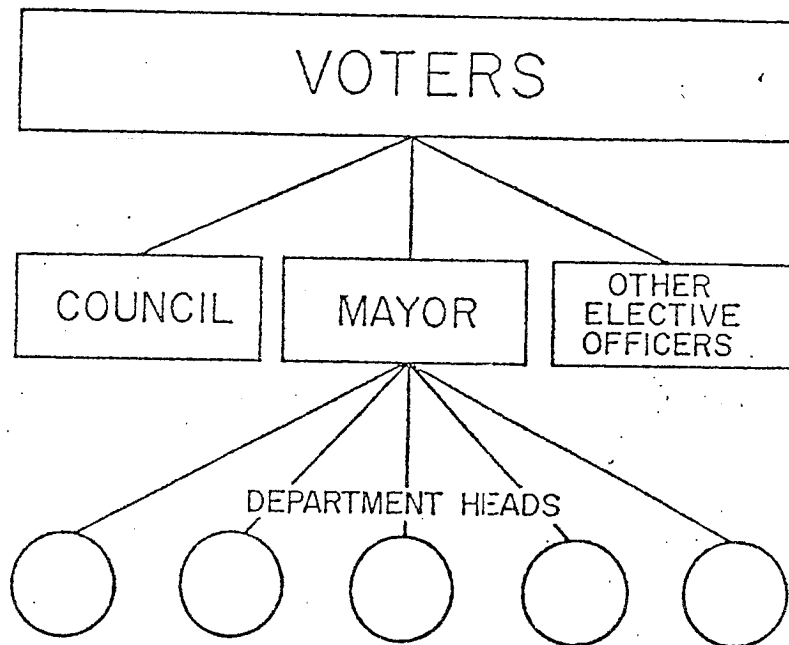
The problems of this form are similar to those of the commission form.

- (1) There is no one, unifying and responsible executive.
- (2) Control of administrative departments may be under several different persons thereby resulting in a lack of coordination and unity of effort.
- (3) The numerous elective positions results in voter confusion and lack of effective voter control.

The theory behind this form was that democracy was best served by directly electing as many officials as possible, dividing responsibility, and relying on elaborate checks and balances to prevent abuse of power. However, the form of government implementing that theory for the above three reasons proved to be inadequate in providing services efficiently and in being subject to voter control.

c. Strong Mayor-Council Form.

STRONG MAYOR-COUNCIL FORM



The strong mayor-council form of government corrects many of the problems found on the weak mayor and commission forms. Both the mayor and the council are elected; however, the elected mayor usually has the authority to hire and fire department heads without confirmation by the council, to veto acts of the council, to prepare the budget for council approval, and to administer the budget after it is adopted. Thus, the strong mayor plan corrects the most serious defects of the two previous forms in that it provides one executive who is responsible for coordinating the various departments and for administering services efficiently.

The major problems are

- (1) There may be few individuals in the community who are both sufficiently expert administrators to effectively administer government services and programs, and also sufficiently adept politicians to get themselves elected. Thus, administrative expertise may bow to political adeptness.
- (2) Political differences may arise between the mayor and the council such that daily governmental operation is impeded because the mayor may veto actions of the council, and the council controls the finances neces-

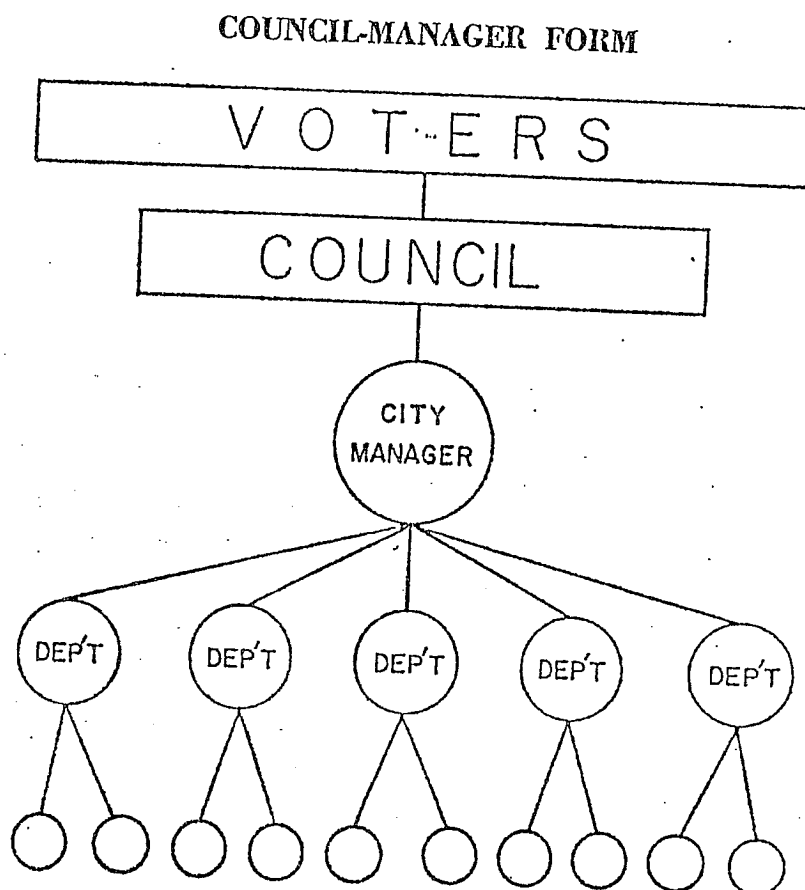
sary to administer the government services and programs.

d. Mayor-Administrator Form.

To correct some of the defects found in the strong mayor plan, some cities have experimented with the mayor - administrator form of government. The structure of the government is similar to that on the strong mayor plan except that much of the mayor's administrative responsibility is delegated to a single chief administrator who is responsible directly to the mayor.

This form has been adopted in some of the larger cities in the nation, and because it is so new, its effectiveness has yet to be adequately judged.

e. Council-Manager Form.



The council-manager plan has two basic features: a small elected council to decide policy questions; and a professionally trained manager, hired by the council and subject to dismissal by it, to administer the government programs.

The following are considered to be the major advantages of this plan of government.

- (1) Policy-making and administrative functions are separated.
- (2) The manager provides expert guidance in administrative matters.
- (3) Responsibility is centralized in a single, chief executive, i.e., the manager, who is held directly accountable to the council.
- (4) City spending may be more easily controlled.
- (5) The manger, as an employee, may be readily dismissed by the council if his work is unsatisfactory.

Major disadvantages of this form are:

- (1) The city lacks a strong political figure in position of leadership since the administrative executive (the manager) is appointed by the council.
- (2) Voter control over the city government may be somewhat decreased since voters elect only the council and have no direct control over the manager.
- (3) The cost of hiring a qualified manager may be high.
- (4) (In the case of an Indian tribe, who might wish to hire an Indian manager, there would be the additional problem of finding an Indian who was a qualified city manager.)

## 2. Analyses of the Pre-Termination Menominee Form of Government.

The following discussion of the pre-termination Menominee form of government is basically a summary of the main points found in two analyses, one by Gary Orfield in A Study of the Termination

Policy, Chapter 3, and the other by Verne Ray in his study entitled The Menominee Tribe of Indians, 1940-1970.

a. Explanation of the General Council Form of Government.

In 1928, the first tribal constitution established the General Council form of government. This form basically established a mechanism for making recommendations to the BIA regarding the operation of the Menominee tribal affairs. Two political entities were set up: The General Council, consisting of all adult Menominees; and the Advisory Council, consisting of twelve members, six selected at large and six from districts. The General Council was required to meet twice a year and the Advisory Council had governing authority between General Council sessions. However, the General Council held veto or appeal power over any action of the Advisory Council.

The 1928 Constitution lasted until the tribe was terminated. The constitution was specifically stated not to be an IRA constitution.

There is attached for your reference, as Exhibit A, a chart containing a diagram of the pre-termination Menominee government and copies of the pre-termination Menominee government and copies of the pre-termination Menominee constitution and bylaws - both the original uncoded version and the latest coded version.

b. Weaknesses of the General Council Form.

Both Orfield and Ray concluded in their studies that the pre-termination Menominee government failed to function as an effective government. Its ultimate failure was its incapacity to effectively combat termination of the tribe. Several reasons are stated as the bases for the failure of the government. Essentially, however, the conclusion to be drawn from the two studies is that the General Council form of government was never intended or structured to provide the service function of government (the BIA provided government services to the tribe); and, in addition, the General Council form was inadequately structured to perform the political function of government, that is, to accurately reflect the will of the Menominee people.

The General Council form of government was intended and planned simply to make policy recommendations to the Bureau of Indian Affairs who then administered the program on the reservation. In effect, the BIA was free to ignore the recommendations of the Advisory Council.

Thus, the governmental structure of the Menominee proved inadequate when the time came for the tribe to decide important policy questions quickly yet wisely. The General Council form was

not structured to allow leaders who had the necessary expertise and information to make the decisions on complex issues facing the tribe, particularly when there was no time to educate the people regarding the issue prior to a referendum. Nor did the General Council form provide a framework for making decisions which accurately reflected the will of the majority of the Menominee people, rather than the few which attended General Council meetings. Finally, the form did not provide leaders with the experience of actually operating a government and thus most felt unprepared to to accept the responsibility for decisions which were not reviewable by the BIA and which would have a tremendous and direct impact upon the lives of the Menominee people.

In summary, the General Council form of government was structurally inadequate to provide the expert leadership which the tribe needed in an emergency where the most complex issues face the tribe for decision.

### 3. Three Tribal Forms of Government.

There is also included for your reference, three different forms of tribal governments adopted by the following tribes: Fort Berthold Reservation (Arickara, Gros Ventres, and Mandan Tribes) (Exhibit B); Mescalero Apache (Exhibit C), and Blackfeet (Exhibit D). For each form, there is included a chart of the form and a copy of the constitution establishing the government.

These three tribal forms of government were chosen only because they illustrate three different forms of government, and three different ways of dealing with the considerations listed in the foregoing part B. Any information as to the strengths and weaknesses of each government is not available.

### C. Specific Decisions Relevant To Choosing A Form Of Government For The Menominee Tribe.

While keeping in mind the three general functions which should be promoted by the form of government, the Committee in structuring a form must decide upon the following questions:

1. How many branches of government should be established and what should each be authorized to do in terms of

- (1) Enacting laws;
- (2) Enforcing laws; and
- (3) Interpreting laws?

Comment - In most city governments and in most tribal governments, the council is the governing body which is authorized to both enact and enforce laws. Usually, a three branch system of government is found only in larger governments such as the federal

government, the state governments, and the Navajo Tribe (population 119,546). An exception is, of course, the Mescalero Apache Tribe (population 1,676), whose constitution is included as Exhibit C of this part.

Generally, governments are formed with the court system separate from the governing body. Thus, the interpretation of laws becomes the duty of the courts, not the governing body. Although, you will note that in the Mescalero Apache system, the governing body is also the appellate court.

The purpose, as discussed in Part I of this handbook, in providing for at least two branches of government is to make it difficult for governmental powers to be misused. If each branch is granted only a part of the authority needed to use governmental powers, then no one branch of government can by itself use government powers without the cooperation of the branch. The disadvantage inherent in such a division of authority to use powers is that the branches may not cooperate.

Thus, with the establishment of each branch, the possibility of a lack of cooperation may be increased which in turn may hinder provision of services, but, on the other hand, it becomes more difficult for government to misuse power, and more officials are forced to consider the wisdom of a particular law.

2. What authority should be granted to each branch of government over another branch or branches?

Comment - Because the primary purpose of establishing a multi-branch government is to divide the authority to use power, it is advisable to include in the constitution a "separation of powers" provision. The purpose of such a provision is to prohibit the officials who enact laws from authorizing any branch to perform the duty of another thereby nullifying the very reason for having separate branches of government.

Generally, the power to appoint or approve appointment of officials in another branch of government, or the power to review and veto actions of another branch, are granted for the purpose of promoting more deliberation on the wisdom of a particular action. For example, the President of the United States has the duty to review and veto, if necessary, acts of the Congress. Generally, the President vetoes acts which he considers to be bad for the budget or the welfare of the people, or which he believes are not in line with the policies of his administrative leadership. Congress, in turn, can pass a law by a 2/3 vote even if it is vetoed by the President. In addition, the Congress has certain authority to review appointments of the President such as appointments of ambassadors and judges of the Supreme Court. Also, Congress has the duty to approve treaties made by the President.

Thus, the key question is whether any action taken by one branch is of sufficient importance that it should be reviewed by



another branch and vetoed or disapproved if thought necessary.

3. Which tribal officials should be elected and which should be appointed?

1. Characteristics of elected officials.

- (a) Responsive to desires of people, including groups of people with special interests;
- (b) Subject to direct removal by people at regular or special elections;
- (c) May not possess expertise in administering government programs; and
- (d) Tendency may be to reward those who helped win election or to appease strong political groups with jobs in government without regard to qualifications.

2. Characteristics of appointed officials.

- (a) More insulated from pressures of political groups;
- (b) May be responsive to whomever has power to remove (usually same person(s) who appoints) rather than to the people;
- (c) Can be chosen for expertise rather than appeal to people; and
- (d) Not subject to direct removal by the people.

Comment - Based on the above characteristics, it is generally believed that officials who are responsible for establishing general governmental or tribal policies should be elected, while those who are responsible for efficient and expert administration of government programs implementing the policies should be appointed by elected officials.

To hinder appointments under a "spoils system", the official should be required to consider appropriate qualifications for the job available. Generally, if the appointee must be able to cooperate closely with the elected official, it is better to allow the elected official to remove the appointee at will because if they cannot cooperate the programs will not be implemented efficiently or perhaps at all. But if it is advisable that the appointee be independent, for example, a judge, it is better to set forth what causes constitute grounds for removal and perhaps even to set forth the procedure to be followed before removal.

4. How many officials should there be?

Comment - In the governing body, there should be enough to adequately represent the people, but not so many that the operation of government becomes difficult to manage, or so that the people are not able to keep track of the performance of any one official. The number usually suggested for small governments is five to nine.

5. Should the officials be elected at large or from districts or should there be a combination of the two methods of election?

Comment - Election of tribal officials by districts sometimes tends to prevent real majority rule. A majority in each of a majority of the districts is not necessarily a majority of the electorate. Then, too, the petty issues of the various factions of the tribe may come to predominate over those that concern the whole tribe, and leaders who have tribal views and followings will be swallowed up in the large number of representatives who are district-rather than tribal-minded. The district system may lead to bitter struggles to achieve a fair redistricting as the tribe grows and the population shifts. To overcome these and a number of related problems, the constitution may provide that all or a substantial proportion of the tribal officials will be elected by all the people. Only 25 per cent of cities over 5,000 use the district system. 59 per cent use the at-large system.

The combination system, whereby a certain number of candidates are elected at large and others by districts, may be particularly useful in large communities or in communities where it is felt that election of all officials at large would leave important elements in certain parts of the community with a feeling of being permanently unable to win representation.

6. Terms of office - how long should they be and should they be staggered?

Comment - The goal of the Committee in answering this question should be to decide what length of term of office will provide continuity, stability and experienced leadership without resulting in stagnant government and without excessively reducing the voters' control over the governing body. Staggered terms of office promote continuity and stability in government. A term of two years may be too short to permit a new official to gain the experience and knowledge he needs to be able to function effectively in office. A term longer than four years may result in stagnant government.

7. What should the qualifications of tribal officials be?

Some possible qualifications are:

- (1) Tribal membership.
- (2) Indian descent (with regard to appointed officials).
- (3) Resident of reservation.
- (4) Age.
- (5) Qualified voter of reservation or appropriate district.
- (6) Expertise in some area (particularly with regard to appointed officials).

Comment - Generally, qualifications should be required only if they will promote a better job in the particular government office under consideration. Tribal membership, of course, should be a qualification of elected representatives.

8. Should tribal officials be compensated?

Some considerations pertinent to this decision are:

- (1) How much time will the official be required to devote to his office?
- (2) The Tribe should expect to pay an official who is appointed or hired primarily for his or her expertise in an area an appropriate salary.
- (3) How much compensation can the tribal budget bear without sacrificing quality in tribal programs?
- (4) Salaries should be established by formal action of the governing body.

Comment - If the constitution allows elected officials to be compensated, it might also prohibit the amount of compensation from being raised or reduced during any particular official's term of office.

Experience with regard to city governments has shown that salaries of city council members should be nominal where the council members are policy makers and do not actually administer the government's programs. The conclusion is that a generous salary is likely to attract candidates who are interested more in the income than in rendering public service. Also, the experience of cities shows that too large of salary could encourage council members to think of themselves as managers and thus distract them from their role as policy makers responsive to the people. But where council members are also administrators of programs, a salary commensurate with their duties might be considered.

9. What should be the structure of each branch of the government, if more than one; that is, should subordinate units be created within each branch?

If specific units within branches are created in the constitution, the following are considerations to keep in mind.

1. The purpose of subordinate government units is to carry-out government policies efficiently and effectively in the form of programs providing services.
2. Experience has shown that the performance of a government unit is best where a line of responsibility ends with one person, rather than a group of persons such as a board or commission.
3. Experience has also shown that it is easier for the policy makers to oversee the implementation of programs if they can look to one person who is responsible for the performance of a unit.
4. It is not advisable to provide for the direct election of officials who head subordinate units because this results in more people for the voters to keep track of, and it also results in confusion as to who is really to be held responsible for the broad results of a government program, i.e., the policy makers or the subordinate administrators.
5. Boards, commissions, and committees, if they are to be created, operate best for purposes of advising, planning, or reviewing.

Comment - It is advisable for the Committee to keep the structure of each branch of government as simple as possible in the Constitution. This can be done by authorizing the governing body to create (or abolish) whatever subordinate units it deems necessary. If the Committee feels that certain departments or units are absolutely necessary, it can list the units and their purpose and impose a duty on the governing body to create and implement the units. The Constitution can also determine how the officials of the subordinate units will be selected, by election or by appointment. It can also establish qualifications for office and so forth. However, again, it is best to keep reference to subordinate units in the constitution to a minimum, thus allowing the governing body to modify, eliminate or create new ones as the need arises.

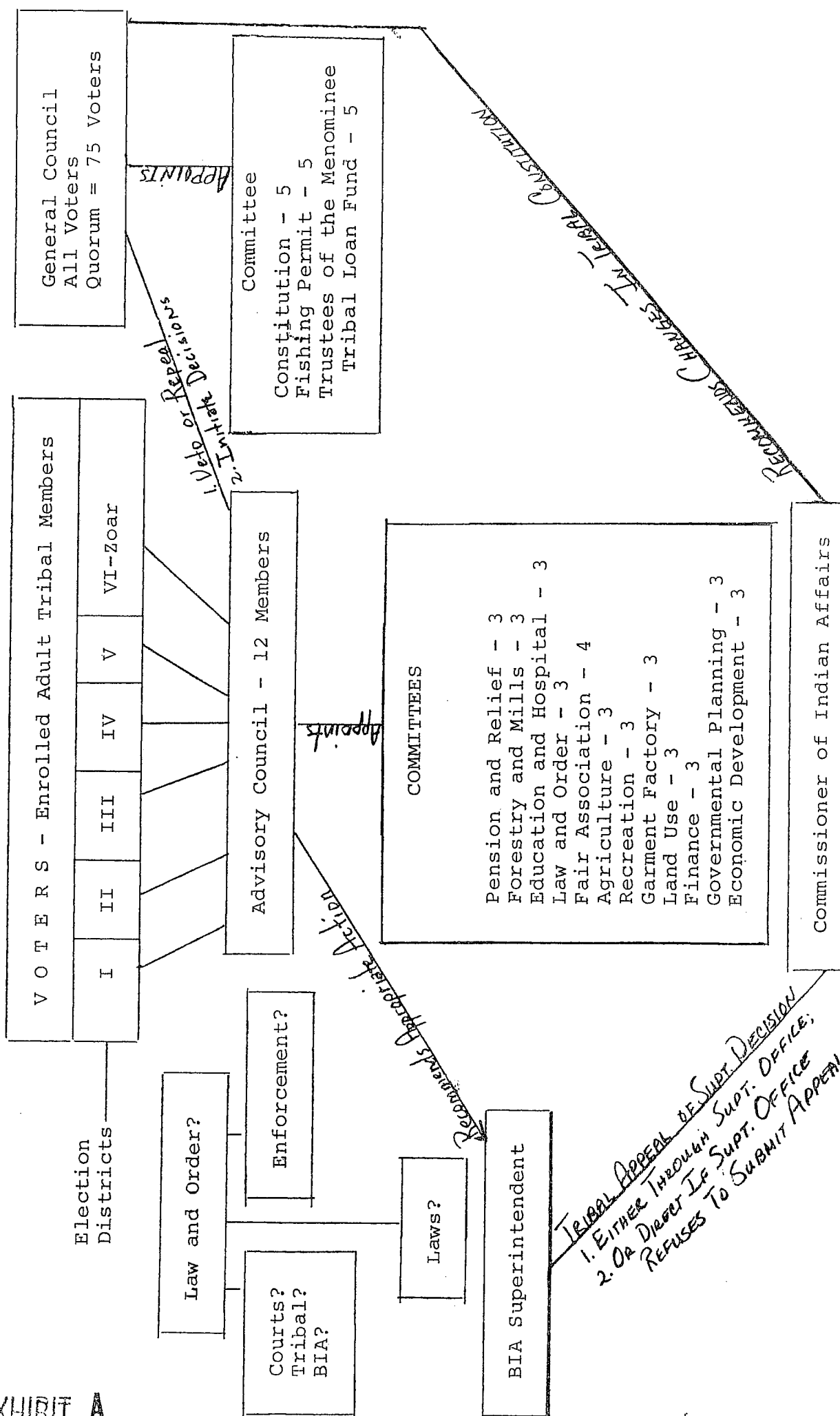
#### 10. Courts - Special Considerations.

The foregoing questions generally apply to the court system, but there are some considerations which are unique to the court

system, especially tribal courts.

1. Jurisdiction of the court must be defined - can be the same or less than jurisdiction claimed in jurisdiction provision.
2. The constitution may establish both trial courts and appellate courts.
3. The Committee should decide whether the courts should be authorized to review and invalidate actions of the other branches as being in violation of the constitution. The courts could be authorized only to interpret laws and resolve disputes between people.
4. If the courts are authorized to review and invalidate actions of other branches, then some provisions should be made to insulate the courts from being controlled by the other branches. This can be done by providing for election of judges, or by providing for initial appointments for long terms subject to renewal if approved by a vote of the people, or by appointing for life, subject to removal for cause.
5. Constitution should authorize and direct either courts or the governing body to establish court rules and procedures.
6. Qualifications of judges. Should judges be required to have knowledge of the Menominee traditions and cultures so that court decisions can be based in part upon that knowledge? Should judges be required to have some knowledge of the laws of the federal government? Remember that tribal courts are bound by the Indian Bill of Rights (25 U.S.C. §§1301, and 1302).
7. Should judges be elected or appointed? The decision on this question depends in part on whether and to what extent a judge should be influenced by the will of the people. It also depends, in part, on whether a judge should be chosen for his or her appeal to the voters or primarily upon expertise and ability to make fair decisions on matters in dispute between persons, or between persons and the government.

EXHIBIT A



AMENDED  
CONSTITUTION AND BY-LAWS  
COVERING THE ELECTION AND DUTIES OF AN  
ADVISORY COUNCIL OF THE MENOMINEE INDIANS  
OF THE KESHENA AGENCY, WIS.

As Amended by  
Tribal Council of February 11, 1928

As Amended by  
General Council on September 22, 1934

and approved  
by the Commissioner on November 6, 1934

As Amended by  
General Council of the Menominee Tribe  
and approved  
by the Indian Office on February 14, 1942

AN ADVISORY COUNCIL OF THE MENOMINEE INDIANS OF THE

KESHENA AGENCY, WISCONSIN

1. A Committee of Menominee Indians, to be known as "The Advisory Council of the Menominee Indian Reservation", shall be selected to consist of ten enrolled and recognized adult members of the Menominee Tribe.

2. The method of selection shall be as follows: All ten members shall be elected by the adult members of the tribe in the manner hereinafter described: Those desiring to be candidates shall, not less than ten days before election day, file their names in the office of the Superintendent of the Reservation, supported by a petition signed by not less than twenty-five qualified voters of the Tribe. An election committee consisting of six members of the tribe shall be designated, in a manner to be determined by the General Council prior to such election, to provide for qualification and review of nominees. The Superintendent shall prepare a ballot containing the names of all the nominees so filed. Election shall be held on a day in September to be designated by the Superintendent and properly advertised for not less than thirty days prior thereto. An election board shall consist of an Inspector, Clerk, and Ballot Clerk, to be selected by the bystanders at the time designated for the opening of the polls, and who shall immediately thereafter declare the polls open. Polls shall be open at 9:00 a.m. and remain open until 5:00 p.m. Each voter shall obtain from the ballot clerk an official ballot, which shall bear the endorsement of the ballot clerk. The voter shall immediately mark his choice of ten from the list of candidates, and deliver the ballot to the inspector who shall deposit same in the ballot box, and announce to the clerk the name of the voter, which shall be written on the polling list by the clerk. In case any voter is not able to prepare his ballot, he may call upon any member of the election board to assist him. Immediately after the closing of the polls, the



ballet box shall be opened and the votes counted by the election officers. The ballots and tally sheets shall then be delivered to the Superintendent, who, with the two judges of the Indian court of the Monominee Reservation, shall constitute the canvassing board. The ten candidates receiving the highest number of votes shall be declared elected.

3. The ten members so chosen shall take office on the third Monday in October, or as soon thereafter as practicable following their election, and shall hold office for two years and until their successors are chosen and qualify.

4. Should any vacancy arise in the Advisory Council by the death, resignation, or otherwise, of any of its members, said vacancy shall be filled by the Tribal council.

5. Before entering upon duty, each member of the Advisory Council shall subscribe in the presence of the Superintendent of the Reservation the following oath: "I, (name), do solemnly swear that I will support and defend the Constitution of the United States of America, and faithfully execute the office to which I have been elected."

6. At the first regular meeting held by the Advisory Council after its election, it shall select from its members a president and a secretary. The president's duties shall be to preside at all meetings when present, and the secretary's duty shall be to keep a record of all proceedings, and file a certified copy of the same in the office of the Superintendent, within ten days after the meeting. In the absence of either of the above officers, the Advisory Council shall elect a president or secretary pro tem. No business shall be transacted without the presence of a quorum, which shall consist of a majority of the members of the Council. The minutes of the Council shall be signed by the president and secretary and at least three other members of the Council.

7. The regular meetings of the Council shall begin each year on the third

Monday in October, or as soon thereafter as practicable after the new Council is elected. In case of exigency, the President of the Council may call a special meeting of the Council, upon a request in writing by the majority of the Council members. All meetings are to be held in Keshena or Keopit, in the discretion of the Council. The total length of time consumed for all such meetings shall not exceed fifteen days in any one year.

8. The Advisory Council as above constituted shall be the representatives of the Menominee Tribe of Indians in all matters affecting the welfare and business of the Tribe, including the conduct of the logging and milling operations on the Reservation, and it shall be the duty of the Council to consider all matters brought to its attention by the members of the Tribe, or by the Superintendent, or that may arise through its own investigations, and shall submit to the Superintendent of the Reservation for appropriate action such recommendations as it has to make. If the Superintendent fails to take satisfactory action, the Council may appeal to the Commissioner of Indian Affairs, through the Superintendent of the Reservation, and if the Superintendent of the Reservation fails or refuses to submit such appeal, the Council may communicate direct with the Commissioner of Indian Affairs.

9. Each member of the Advisory Council shall receive as compensation for his services, \$5.00 for each day's attendance at the regular and special meetings, and 10¢ per mile for the distance necessarily traveled from his home to the meeting place and return: Provided, that compensation shall not be paid for more than fifteen days in one year. This compensation shall be paid by check, drawn by the Superintendent of the Reservation from tribal funds applicable.

10. The Tribal Council may recommend to the Commissioner of Indian Affairs any changes in these regulations that may, at any time in its judgment, seem advisable.

11. Candidates for membership in the Advisory Board shall be appointed on the basis of one representative for each 200 tribal members, it being the purpose of this provision to reflect district representation, each district being permitted to vote only for the representative of that district.

12. (1) Regular and special general councils shall be called on dates to be determined upon and fixed by the Advisory Board with the approval of the Superintendent. At least one general or special council shall be held in each six months period of the calendar year.

(2) A meeting of the general council shall not be recognized as such unless there shall be present at the time of the meeting at least 100 members of the Menominee Indian Tribe who are eligible to vote. It shall be the duty of the chairman of the general council, prior to any vote being taken on any question pending before the council to ascertain and determine whether a quorum is present and in the absence of a quorum no business shall be transacted.

(3) The Advisory Board shall, during the period when the general council is not in session, transact business of the tribe and any action properly taken by the Advisory Board shall be binding upon the tribe unless and until it shall have been repealed by the general council duly assembled for that purpose.

(4) In lieu of the present ten election districts into which the Menominee Reservation is divided, the Reservation shall be divided into five election districts (such division to be effected by the Advisory Council, each district to consist of not less than 300 tribal members) and there shall be elected by the qualified voters living therein one councilman from each of the five districts and five councilmen from the tribe at large by the qualified voters of the entire tribe.

(5) Notices of all meetings of the general council shall be published at least ten days preceeding the date of the meeting in the "Menominee Minutes"

the tribal newspaper and by placing copies of such notice on the bulletin boards at the Keshena Agency, the office of the Menominee Indian Mills, the post offices in Keshena and Neopit, at the punch clocks of the saw mill, planing mill, and the yard, at the South Branch Ranger Station, the bulletin boards of the community centers at Zoar and West Branch and such other places as may be determined upon from time to time. Such notices in addition to containing the date, the time and place of the meetings, shall list in numerical order the business to come before the meeting and no business not so listed shall be transacted before the meeting of the council.

(5) The notices of all meetings of the general council shall be prepared by the Superintendent of the reservation, but shall include all items requested by (1) the Advisory Board, (2) the manager of the Menominee Indian Mills, (3) any petition duly signed by 250 qualified voters of the Menominee Tribe, and may include such other items as the Superintendent desires to present to the tribe. Such requests shall be in writing and shall clearly state the nature of the business. They shall be dated and signed by the parties presenting the same and shall be presented to the Superintendent of the Menominee Reservation at least 24 hours in advance of the publication of the notice of the particular general or special meeting of the council.

(7) The election of the councilmen provided for in Item 4, supra, for the year 1942 shall be held in January of that year, (the precise date to be determined by the Superintendent) and the terms of the councilmen so elected shall expire on the third Monday in October 1943 or as soon thereafter as their successors are chosen and qualified; for the year 1943 and every two years thereafter the election of the councilmen shall be held on a day in September. Except as herein stated the provisions of the Constitution and by-laws governing the

election and duties of the Advisory Council of the Menominee Indian approved by the Commissioner of Indian Affairs and Secretary of the Interior on February 11, 1928, as amended November 26, 1934 shall govern the transaction of Tribal business. These regulations shall not be construed as the adoption of any charter under the Indian Reorganization Act.

## R E S O L U T I O N

"RESOLVED, that it is the sentiment of the Menominee Indian Tribe in general council assembled this seventeenth day of October, 1942, that Section Seven of the Resolution concerning the transaction of Tribal Business, adopted by the Tribe on December 13, 1941, as amended on February 14, 1942, is amended to read as follows:

"The election of councilmen provided for in Section Four, supra, for the year 1942, shall be held on November 24, 1942. The terms of the Councilmen so elected shall expire on the 30th day of November, 1944, or as soon thereafter as their successors are elected and qualified."

"All elections for Councilmen held after this presently provided for election shall be held in November of even numbered years, on a date to be specified by the Superintendent or the General Council; it being the intention herein to coincide such elections with the general state elections held on the Tuesday following the first Monday in November of even numbered years. The terms of Councilmen elected hereunder shall expire on November 30 of even numbered years."

"Except as herein stated the provisions of the Constitution and by-laws governing the election and duties of the Advisory Council of the Menominee Indians approved by the Commissioner of Indian Affairs and Secretary of the Interior on February 11, 1938, as amended November 26, 1938, shall govern the transaction of Tribal business. These regulations shall not be construed as the adoption of any charter under the Indian Reorganization Act."

"I hereby certify that the above resolution was presented to the General Council of the Menominee Tribe of Indians, October 17, 1942, and adopted by a vote of 68 to nothing.

(Sgd) Joseph Koshorn  
Chairman

1

CODIFICATION OF THE CONSTITUTION AND BY-LAWS  
OR RULES OF THE RENOMINEE INDIAN TRIBE,  
ADVISORY AND GENERAL COUNCILS.

- SEC. 1. ADVISORY COUNCIL, DISTRICTS, SELECTION OF COUNCILMEN.
- SEC. 2. ELECTION DISTRICTS AND ELECTORS THEREIN.
- SEC. 3. NUMBER OF COUNCILMEN AND METHOD OF SELECTION.
- SEC. 4. CANDIDATES FOR COUNCIL, TIME OF FILING.
- SEC. 5. PREPARATION OF BALLOT.
- SEC. 6. ELECTION, DATE THEREOF.
- SEC. 7. ELECTION BOARD, ITS FUNCTIONS.
- SEC. 8. CLOSING OF POLLS AND COUNTING BALLOTS.
- SEC. 9. CRAWPASSING BOARD AND ITS DECISION.
- SEC. 10. ELECTED MEMBERS TO TAKE OFFICE.
- SEC. 11. FILLING VACANCIES.
- SEC. 12. OATH OF OFFICE.
- SEC. 13. ORGANIZATION OF COUNCIL AND ELECTION OF ADVISORY COUNCIL OFFICERS.
- SEC. 14. DUTIES OF PRESIDENT AND SECRETARY.
- SEC. 15. QUORUM ADVISORY COUNCIL.
- SEC. 16. APPROVAL OF ADVISORY COUNCIL.
- SEC. 17. REGULAR SPECIAL MEETINGS.
- SEC. 18. PLACE OF MEETINGS AND TIME LIMITATION.
- SEC. 19. ADVISORY COUNCIL'S DUTIES AND RESPONSIBILITIES.
- SEC. 20. COUNCIL SHALL MAKE RECOMMENDATIONS TO SUPERINTENDENT.
- SEC. 21. COUNCIL MAY APPEAL TO COMMISSIONER.
- SEC. 22. COUNCIL TO ACT FOR TRIBE WHEN GENERAL COUNCIL NOT IN SESSION.
- SEC. 23. GENERAL COUNCIL MAY REPEAL ACTIONS OF ADVISORY COUNCIL.
- SEC. 24. COMPENSATION OF MEMBERS OF ADVISORY COUNCIL.
- SEC. 25. GENERAL COUNCIL MEETINGS, NUMBER THEREOF.
- SEC. 26. QUORUM GENERAL COUNCIL.
- SEC. 27. NOTICE AND POSTING OF GENERAL COUNCIL MEETINGS.
- SEC. 28. NOTICE OF BUSINESS TO BE TRANSACTED.
- SEC. 29. PREPARATION OF NOTICES.
- SEC. 30. ITEMS TO BE INCLUDED IN NOTICES, BY WHOM SUBMITTED.
- SEC. 31. RECOMMENDATIONS TO COMMISSIONER.
- SEC. 32. CONSTRUCTION, REORGANIZATION ACT.

NOTE. REFERENCES IN THIS CODE TO THE CONSTITUTION AND BY-LAWS ARE TO THE CONSTITUTION AND BY-LAWS GOVERNING THE ELECTION AND DUTIES OF AN ADVISORY COUNCIL OF THE RENOMINEE INDIANS AND OF THE GENERAL COUNCIL AS AGREED BY THE TRIBAL COUNCIL AND APPROVED BY THE SECRETARY OF THE INTERIOR OR THE COMMISSIONER OF INDIAN AFFAIRS ON FEBRUARY 11, 1933, September 22, 1934.

RULES OF THE MENOMINEE INDIAN TRIBE, AD-

VISORY AND GENERAL COUNCILS

References in this Code to the Constitution and By-Laws are to the Constitution and By-Laws governing the election and duties of an Advisory Council of the Menominee Indians and of the General Council as amended by the Tribal Council and approved by the Secretary of the Interior or the Commissioner of Indian Affairs on February 11, 1938, September 22, 1934.

SEC. 1. ADVISORY COUNCIL, DISTRICTS, SELECTION OF COUNCILMEN. A committee of the Menominee Indians to be known as the 'Menominee Advisory Council of the Menominee Indian Reservation' shall be selected consisting of twelve (12) enrolled adult members of the Menominee Indian Tribe, one (1) each to be elected from Districts I, II, III, IV, V, and the Zoar Area, to be known hereafter as District VI. (As amended, and approved by the Acting Commissioner of Indian Affairs on October 9, 1950.)

SEC. 2. ELECTION DISTRICTS AND ELECTORS THEREIN. The Menominee Reservation shall be divided into six (6) election districts, such division to be effected by the Advisory Council except that the Zoar Area shall always constitute one district. Each district shall consist of not less than 250 tribal members, except at District VI (Zoar Area) may consist of a smaller number. (As amended and approved by the Acting Commissioner of Indian Affairs on October 9, 1950.)

SEC. 3. NUMBER OF COUNCILMEN AND METHOD OF SELECTION. There shall be elected the qualified voters living therein one (1) councilman from each of the six (6) districts and six (6) councilman from the Tribe at large by the qualified voters the entire Tribe. (As amended, and approved by the Acting Commissioner of Indian Affairs on October 9, 1950.)

SEC. 4. CANDIDATE FOR COUNCIL, TIME FOR FILING. The twelve (12) members of the Advisory Council are to be elected by the adult members of the Tribe as provided for in SEC. 3 of this Code, in the manner hereinafter described: All qualified, enrolled members of the Tribe desiring to be candidates shall not less than ten (10) days preceding election day file their names in the office of the Superintendent of the Reservation, supported by a petition signed by not less than twenty-five (25) qualified voters of the Tribe. (Source of this section is paragraph 2 of the Constitution and By-laws and paragraph 7 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 5. PREPARATION OF BALLOT. The superintendent shall prepare a ballot containing the names of all the candidates whose names have been filed as prescribed in SEC. 4 of this Code. (Source of this section is paragraph 2 of the Constitution and By-laws and paragraph 7 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 6. ELECTION, DATE THEREOF. Election day shall be held on the Tuesday following the first Monday in November and shall be advertised properly for not less



than thirty (30) days prior thereto. (Source of this section is paragraph 2 of the Constitution and By-laws and paragraph 7 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 7. ELECTION BOARD, ITS FUNCTIONS. The election board shall consist of an inspector, clerk, and ballot clerk, all of whom shall be selected by the bystanders at the polls, located within each of the several election districts at the time designated for the opening of the polls. The inspector, clerk, and ballot clerk, after their selection, shall immediately declare the polls open. The time for opening the polls shall be 9:30 A.M. and the polls shall remain open until 5 P.M. Each voter shall obtain from the ballot clerk an official ballot which shall bear the endorsement of the ballot clerk. The voter shall promptly mark his choice from the list of candidates and deliver the ballot to the inspector who shall deposit same in the ballot box and announce to the clerk the name of the voter. The clerk shall immediately write the name of the voter on the polling list. In case any voter is not able to prepare his ballot, he may call upon any member of the election board to assist him. (Source of this section is paragraph 2 of the Constitution and By-laws and paragraph 7 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 8. CLOSING OF POLLS AND COUNTING OF BALLOTS. Immediately after the closing of the polls at 5 P.M. the ballot box of each district shall be opened by the election officers and the ballots counted. The ballots and tally sheets shall then be delivered by the election officers to the Superintendent of the Reservation. (Source of this section is paragraph 2 of the Constitution and By-laws and paragraph 7 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 9. CANVASSING BOARD AND ITS DECISION. The Superintendent and the two judges of the Indian Court of the Menominee Reservation shall constitute the canvassing board. The six (6) at large candidates and each District Candidate receiving the highest number of votes shall be declared elected. (Source of this section is paragraph 2 of the Constitution and By-laws and paragraph 7 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 10. ELECTED MEMBERS TO TAKE OFFICE. The twelve (12) candidates declared elected by the Canvassing Board (SEC. 9 of this Code) shall take office on the 30th day of November or as soon thereafter as practicable following their election and shall hold office for two (2) years and until their successors are elected or chosen and qualify. (Source of this section is paragraph 3 of the Constitution and By-laws and paragraph 7 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 11. FILLING VACANCIES. Should any vacancies arise in the Advisory Council by death, resignation, or otherwise of any of its members, said vacancies shall be filled by the General Council. (Source of this section is paragraph 4 of the Constitution and By-laws.)

SEC. 12. OATH OF OFFICE. Before entering upon duty each member of the Advisory Council shall subscribe, in the presence of the Superintendent of the Reservation, the following oath: "I, (name), do solemnly swear that I will support and defend the Constitution of the United States of America, and faithfully execute the office to which I have been elected." (Source of this section is paragraph 5 of the Constitution and By-laws.)

SEC. 13. ORGANIZATION OF COUNCIL AND ELECTION OF ADVISORY COUNCIL'S OFFICERS. The first regular meeting to be held by the Advisory Council after its election shall select from its members a President and a Secretary. (Source of this section is paragraph 6 of the Constitution and By-laws.)

SEC 14. DUTIES OF PRESIDENT AND SECRETARY. The President's duties shall be to preside at all meetings when present. He shall devote his full time to tribal matters. His salary shall be \$2400 per annum. The Secretary's duties shall be to keep a record of all proceedings and file a certified copy of same in the office of the Superintendent within ten (10) days after each meeting. In the absence of either the President or Secretary, the Advisory Council shall elect a President or Secretary, pro tem. (Source of this section is paragraph 6 of the Constitution and By-laws, the Act of Congress of July 12, 1943, (57 Stat. 469) as supplemented or amended, and the approval of the General Council of June 24, 1944, of the Council's budget approved by the Commissioner of September 11, 1944.)

SEC. 15. QUORUM ADVISORY COUNCIL. No business shall be transacted without the presence of a quorum which shall consist of the majority of the members (12 members) of the Advisory Council. (Source of this section is paragraph 6 of the Constitution and By-laws.)

SEC 16. APPROVAL OF ADVISORY COUNCIL'S MINUTES. The minutes of the Advisory Council shall be signed by the President and Secretary and at least three (3) other members of the Council. (Source of this section is paragraph 6 of the Constitution and By-laws.)

SEC 17. REGULAR AND SPECIAL MEETINGS. As soon as practicable after an Advisory Council has been elected, it shall hold its first meeting. In case of emergency, the President of the Advisory Council may call a special meeting of the Council upon a request in writing by a majority of its members. (Source of this section is paragraph 7 of the Constitution and By-laws, as amended by paragraph 7 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 18. PLACE OF MEETINGS AND TIME LIMITATION. All meetings of the Advisory Council shall be held in Keshena or Neopit in the discretion of the Council. Effective as of January 1, 1951, the Advisory Council shall meet regularly once each month and may hold as many special meetings as may be necessary to conduct tribal business. (As amended, and approved by the Commissioner of Indian Affairs on June 4, 1952.)

SEC 19. ADVISORY COUNCIL'S DUTIES AND RESPONSIBILITIES. The Advisory Council shall be the representatives of the Menominee Tribe of Indians in all matters affecting the welfare and business of the Tribe, including the conduct of the logging and milling operations on the Reservation. It shall be the duty of the Advisory Council to consider all matters brought to its attention by the members of the Tribe or by the Superintendent or that may arise through its own investigation. (Source of this section is paragraph 8 of the Constitution and By-laws and paragraph 3 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC 20. COUNCIL SHALL MAKE RECOMMENDATIONS TO SUPERINTENDENT. The Advisory Council shall submit to the Superintendent of the Reservation for appropriate action such recommendations as it has to make. (Source of this section is paragraph 8 of the Constitution and By-laws and paragraph 3 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC 21. COUNCIL MAY APPEAL TO COMMISSIONER. If the Superintendent fails to take the satisfactory action on recommendations of the Advisory Council this Council may appeal to the Commissioner of Indian Affairs, through the Superintendent of the Reservation. If the Superintendent of the Reservation fails or refuses to submit such appeal to the Commissioner, the Council may communicate directly with the Commissioner of Indian Affairs. (Source of this section is paragraph 8 of the Constitution and By-laws and paragraph 3 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 22. COUNCIL TO ACT FOR TRIBE WHEN GENERAL COUNCIL NOT IN SESSION. The Advisory Council shall, during the period the General Council is not in session, transact business of the Tribe and any action properly taken by the Advisory Council shall be binding upon the Tribe until repealed. (Source of this section is paragraph 8 of the Constitution and By-laws and paragraph 3 of the Regulations adopted by the Tribe, December 13, 1941, as amended October 17, 1942.)

SEC. 23. GENERAL COUNCIL MAY REPEAL ACTIONS OF ADVISORY COUNCIL. The General Council duly assembled for that purpose may repeal any action taken by the Advisory Council. (Source of this section is paragraph 8 of the Constitution and By-laws and paragraph 3 of the Regulations adopted by the Tribe, December 13, 1941, and amended October 17, 1942.)

SEC 24. COMPENSATION OF MEMBERS OF ADVISORY COUNCIL. Each member of the Advisory Council, except the President, shall receive as compensation for the services \$8.00 for each day's attendance at the regular and special meetings. No compensation shall be paid for more than fifteen (15) days in any one year. Compensation of the members of the Advisory Council shall be paid by check drawn by the Superintendent of the Reservation from tribal funds applicable. (Source of this section is paragraph 9 of the Constitution and By-laws as superseded and amended by General Council action on June 24, 1944, as approved by the Commissioner of Indian Affairs September 11, 1944, pursuant to the Act of Congress of July 12, 1943 (57 Stat. 469) as supplemented or amended.)

#### GENERAL COUNCIL

SEC 25. GENERAL COUNCIL MEETINGS, NUMBER THEREOF. There shall be held two (2) regular General Councils and as many special General Councils as the occasion demands in any calendar year. The dates of the general and special Councils shall be determined and fixed by the Advisory Council with the approval of the Superintendent. At least one (1) Council, general or special, shall be held in each six (6) month's period of the calendar year. (Source of this section is paragraph 1 of Regulations adopted by the Tribe, December 13, 1941.)

SEC 26. QUORUM GENERAL COUNCIL. A meeting of the General Council shall not be recognized as such unless there shall be present at the time of the meeting and when any action is to be taken at least seventy-five (75) enrolled, adult members of the Menominee Indian Tribe who are eligible to vote. It shall be the duty of the Chairman of the General Council, prior to any vote being taken on any questions pending before the General Council, to ascertain and determine whether a quorum is present. In the absence of the quorum no business shall be transacted. (Source of this section is paragraph 2 of the Regulations adopted December 13, 1941, as amended June 19, 1943.)

SEC. 27. NOTICE AND POSTING OF GENERAL COUNCIL MEETINGS. Notices of all meetings, general or special, of the General Council shall be published at least ten

(10) days preceding the date of the meeting of the "Menominee (Minutes) News", the local newspaper and by placing copies of such notice on the bulletin boards at the Mesena Agency, the office of the Menominee Indian Mills, the Post Offices at Keshen and Neopit, at the punch clocks at the sawmills, planning mill, and the yard, at the South Branch Range Station, the bulletin boards of the community centers at Zoar and West Branch and such other places as may be determined upon by the General Council from time to time. (Source of this section is paragraph 5 of the Regulations adopted December 13, 1941.)

SEC. 28. NOTICE OF BUSINESS TO BE TRANSACTED. Notices of General Council meetings, in addition to containing the date, the time and the place of the meeting, shall list in numerical order the business to come before the meeting and no business not so listed shall be transacted before the meeting of the Council. (Source of this section is paragraph 5 of the Regulations adopted December 13, 1941.)

SEC. 29. PREPARATION OF NOTICES. The notices of all meetings of the General Council shall be prepared by the Superintendent of the Reservation. (Source of this section is paragraph of the Regulations adopted December 13, 1941.)

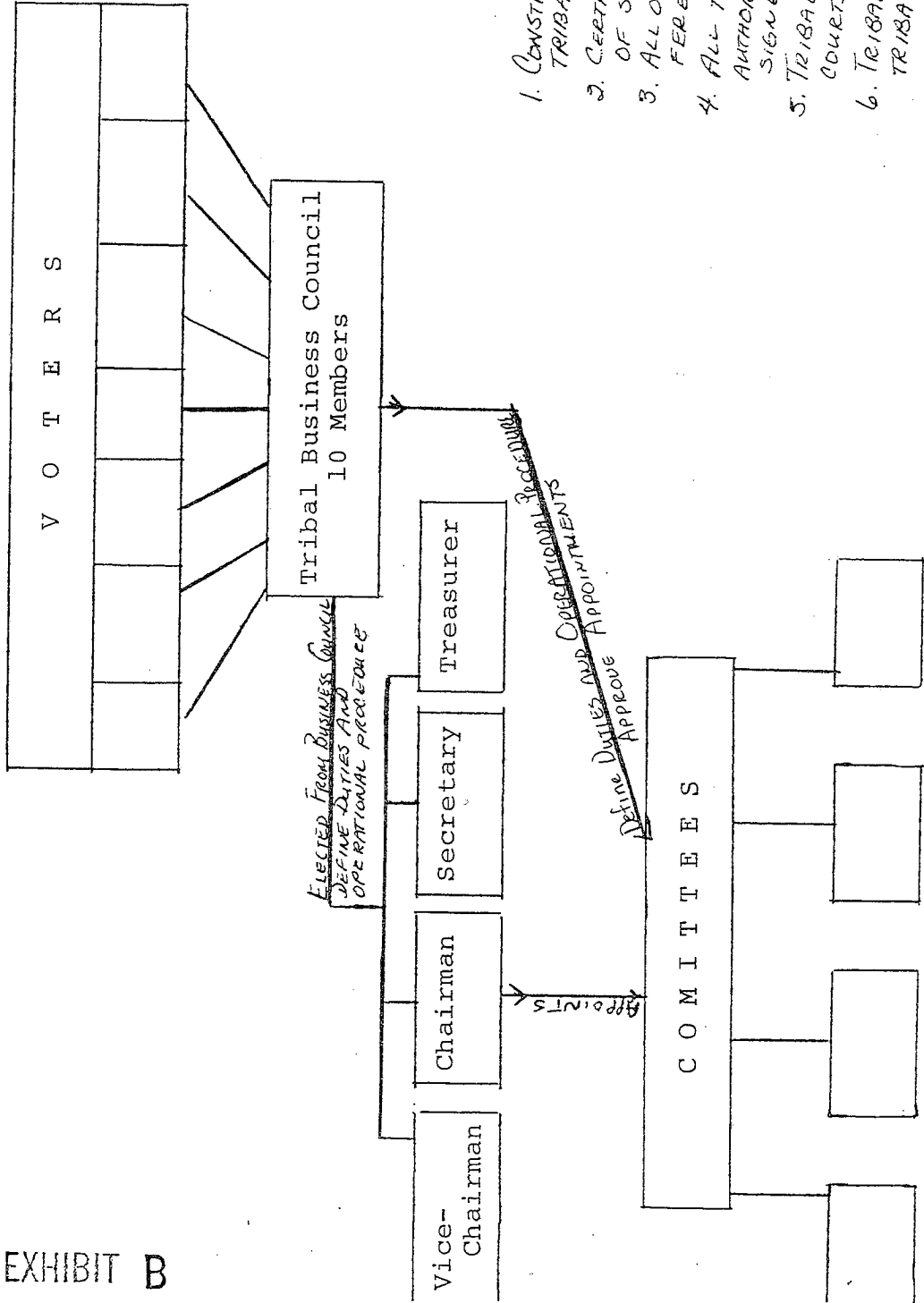
SEC. 30. ITEMS TO BE INCLUDED IN NOTICES, BY WHOM SUBMITTED. Notices of meetings of General Council shall include all items requested by (1) the Advisory Council, (2) (Manager of the Menominee Indians Mills), the Superintendent of the Menominee Reservation, (3) any petition duly signed by two hundred and fifty (250) qualified voters of the Menominee Tribe, and (4) may include such other items as the Superintendent desires to present to the Tribe. Such requests shall be in writing and shall clearly state the nature of the business. They shall be dated and signed by the parties presenting the same and shall be presented to the Superintendent of the Menominee Reservation at least twenty-four (24) hours in advance of the publication of the notice of the particular general or special meeting of the General Council. (Source of this section is paragraph 6 of the Regulations adopted December 13, 1941.)

SEC. 31. RECOMMENDATIONS TO COMMISSIONER. The General Council may recommend to the Commissioner of Indian Affairs any changes in the regulations of this Code that may at any time in its judgment seem advisable. (Source of this section is paragraph 10 of the Constitution and By-laws.)

SEC. 32. CONSTRUCTION, REORGANIZATION ACT. The provisions of SECS. 1 to 31 of this Code shall not be construed as the adoption of any charter or constitution and by-laws under the Indian Reorganization Act. (Source of this section is paragraph 7 of Regulations adopted December 13, 1941.)

FORT BERTHOLD RESERVATION FORM OF GOVERNMENT - (Like Weak Mayor - Council Form)

EXHIBIT B



COMMENT

1. CONSTITUTION ENUMERATES POWERS OF TRIBAL COUNCIL.
2. CERTAIN POWERS ARE SUBJECT TO APPROVAL OF SECRETARY
3. ALL OTHER POWERS ARE SUBJECT TO REFERENCE.
4. ALL TRIBAL EXPENDITURES MUST BE AUTHORIZED BY TRIBAL COUNCIL AND SIGNED BY BOTH SECRETARY AND CHAIRMAN.
5. TRIBAL COUNCIL EMPOWERED TO ESTABLISH COURTS BY ORDINANCE. (ART. 6, §3(b).)
6. TRIBAL COUNCIL EMPOWERED TO PASS TRIBAL LAWS.
7. ALL POWERS NOT ENUMERATED RESERVED TO PEOPLE AND MAY BE EXERCISED BY COUNCIL PURSUANT TO APPROPRIATE CONSTITUTIONAL AMENDMENT (ART. III, §7).

CONSTITUTION AND BYLAWS OF THE THREE  
AFFILIATED TRIBES OF THE FORT BERTHOLD  
RESERVATION

PREAMBLE

We, the Arickara, Gros Ventres, and Mandan Indians of the Fort Berthold Reservation, in North Dakota, eagerly embrace the opportunities for self-rule, and in order to enjoy the blessings of liberty and justice; to intelligently protect our vested rights under existing treaties and the constitution of the United States; to guarantee to our posterity a more hopeful future; to preserve and develop our real estate and resources; to promote educational efficiency for the enhancement of good citizenship; to promote the general welfare of the three tribes; to make possible a more hopeful, self-sustaining, and honorable living, socially and economically, do, with deep consciousness of God, as our sovereign, ordain and establish this constitution for the Three Affiliated Tribes of this reservation.

ARTICLE I--TERRITORY

The jurisdiction of the Three Affiliated Tribes of the Fort Berthold Reservation shall extend to Indian Trust and Tribal lands within the confines of the Fort Berthold Reservation, as defined in the treaty of September 17, 1851; to lieu lands outside of such boundaries; and to such other lands, within or without such boundaries, as have been or may be hereafter added thereto under any law of the United States, except as otherwise provided by law.

ARTICLE II--MEMBERSHIP

SECTION 1. The membership of the Three Affiliated Tribes of the Fort Berthold Reservation shall consist of all persons of Indian blood whose names appear on the official census roll of the three tribes as of April 1, 1935; and all children born to any member of the tribes who is a resident of the reservation at the time of the birth of said children.

SEC. 2. The Tribal Business Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, governing future membership, the adoption of new members and the revision of the membership rolls from time to time as determined by such ordinances.

ARTICLE III--GOVERNING BODY

SECTION 1. The governing body of the Three Affiliated Tribes of the Fort Berthold Reservation shall be known as the Tribal Business Council.

SEC. 2. The Tribal Business Council shall consist of 10 members elected from segments of the Reservation as follows:

Western Segment	3 Representatives
Northern Segment	1 Representative
Northeastern Segment	1 Representative
Eastern Segment	3 Representatives
Southern Segment	2 Representatives

SEC. 3. The boundaries of the segments shall be described as follows:

Western - That part of the reservation bounded on the East by the Garrison Reservoir and on the South by the Little Missouri River arm of the Garrison Reservoir.

Northern - That part of the reservation bounded on the West and South by the Garrison Reservoir and on the East by the Shell Creek arm of the Garrison Reservoir.

Northeastern - That part of the reservation bounded on the West by the Shell Creek arm of the Garrison Reservoir and on the South by the Lucky Mound Creek arm of the Garrison Reservoir.

Eastern - That part of the reservation bounded on the South and West by the Garrison Reservoir and on the West and North by the Lucky Mound Creek arm of the Garrison Reservoir.

Southern - That part of the reservation bounded on the North by the Garrison Reservoir and on the North and West by the Little Missouri River arm of the Garrison Reservoir.

SEC. 4. The Tribal Business Council shall have the authority to change the segment boundaries, subject to the approval of the voters of the reservation at any regular or special election.

SEC. 5. Within 3 days after the election for councilmen has been held, the newly elected Tribal Business Council shall meet and organize by electing a chairman, a vice chairman, a secretary, and a treasurer from its own members; and from within or outside its own members, it may elect or appoint a sergeant at arms and such other officers and committees as it may find necessary.

SEC. 6. The members of the Tribal Business Council shall hold office until the next regular election and until their successors are elected or appointed and qualified.

Changed by Res. 70-89  
attached

## ARTICLE IV--NOMINATIONS AND ELECTIONS

SECTION 1. All elections shall be by secret ballot.

SEC. 2(a). Any member of the Three Affiliated Tribes of the Fort Berthold Reservation, who is 21 years of age or over, shall be entitled to vote at any election.

SEC. 2(b). Absentee ballots will be furnished to any enrolled non-resident member of the tribes upon request to the tribal secretary made 10 days before the election. The ballot must be returned to and reach the tribal secretary on or before the date of the election in order that it may be counted.

SEC. 3(a). Not less than 20 days nor more than 30 days after the date on which this amendment becomes effective an election shall be held. At said election representatives to the Tribal Business Council from the segments as described herein shall be elected to serve until September 1953. Thereafter, the regular election of a Tribal Business Council shall be held on the first Tuesday of September in even numbered years.

SEC. 3(b). Notice of regular elections shall be given by the secretary of the Tribal Business Council who shall give to all enrolled members of the tribe 30 days notice of the time and place of the regular election. In the event the tribal secretary shall fail to give the appropriate notice, or in case a regular election has not been held, the Secretary of the Interior, upon the receipt of a petition signed by at least 30 percent of the adult members of the tribe, shall call such election and give 25 days notice, setting the time and place.

SEC. 4. Special elections may be called by a two-thirds vote of the Tribal Business Council in favor of such special election, or by a petition signed by at least 10 percent of the qualified voters of each community as provided in Article VIII.

SEC. 5. All elections shall be held under the supervision of the Tribal Business Council or an election board appointed by that Council, and the Tribal Business Council or the election board appointed by it, shall make rules and regulations governing all elections, and shall designate the polling places and the election officers.

SEC. 6. In the first election after the adoption of this amendment any qualified voter of the Three Affiliated Tribes of the Fort Berthold Reservation who is a bona fide resident of one of the segments described herein may become a candidate to represent said segment on the Tribal Business Council by filing a notice of his candidacy with the Secretary of the Tribal Business Council at least 15 days before the election in which he is to be a candidate. In all succeeding elections a qualified voter to be



eligible to <sup>be</sup> a candidate must have resided in the segment he proposes to represent for a period of at least six months next preceding the date of the election. At least 10 days before the election, the Secretary of the Tribal Business Council shall post the names of all candidates in each voting community. In the event that any community has no qualified candidate, as provided herein, such community may nominate one or more candidates by petition, signed by at least 10 qualified voters of such community.

#### ARTICLE V--VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. If a council member shall die, resign, permanently remove from the reservation, or be removed for cause, the Council shall declare such position vacant and shall elect to fill the unexpired term from a list of names recommended by a petition signed by a majority of the voters of the community in which the vacancy occurs, and provided that the person elected or appointed by the Tribal Business Council to fill the unexpired term shall be a resident of the community in which the vacancy occurred, and otherwise eligible for the office.

SEC. 2. The Tribal Business Council may expel a member for cause by seven or more members voting for such expulsion, but before any vote is taken on the matter, such member shall be given an opportunity to answer any and all charges at a designated meeting of the Council, and the decision of the Tribal Business Council shall be final as to the expulsion or retention of such member.

#### ARTICLE VI--POWERS

SECTION 1. The Three Affiliated Tribes of the Fort Berthold Reservation, acting through their Tribal Business Council shall have the powers enumerated in this Article, but any power exercised through that council shall be subject to a popular referendum as provided in this Constitution.

SEC. 2. The exercise of the powers enumerated in this Constitution is subject to any limitations imposed by the Statutes of the United States or the Constitution of the United States, and to all express restrictions upon such powers contained in this Constitution and Bylaws.

SEC. 3. The powers enumerated in this Section 3 shall be subject to the approval of the Secretary of the Interior, and may be exercised through the Tribal Business Council which shall have the power, subject to popular referendum as provided in Article VIII of this Constitution:

(a) To present and prosecute any claims or demands of the Three Affiliated Tribes, and to assist members of the Three Affiliated Tribes in presenting their claims or grievances before any court

or agency of government, and to employ attorneys of record or representatives for such services, and to determine their fees.

(b) To promulgate ordinances governing law enforcement on the reservation, and to set up courts for the trial and punishment of offenders against such ordinances in cases which do not come within the jurisdiction of the Federal courts exclusively.

(c) To promulgate ordinances and to adopt rules and regulations and codes for the regulation of the domestic relations of members, and governing marriage, divorce, legitimacy, adoption, the care of dependents, the punishment of offenses against the marriage relationship, and the issuance of licenses and decrees of divorce; all of the matters enumerated in this section to be administered by the Tribal Business Council through a reservation or tribal court, except such of these matters as the Tribal Business Council may by ordinance or resolution leave to state laws and courts.

(d) To remove or exclude from the limits of the reservation, non-members of the tribe, excepting authorized government officials and other persons now occupying reservation lands under lawful authority, and to prescribe appropriate rules and regulations governing such removal and exclusion, and governing the conditions under which non-members of the tribe may come upon tribal lands or have dealings with the tribal members; and to levy taxes or license fees on non-members doing business within the reservation, such acts to be consistent with Federal laws governing trade with Indian Tribes.

SEC. 4. Any resolution or ordinance which, by the terms of this Constitution, is subject to review by the Secretary of the Interior shall be presented to the Superintendent of the Fort Berthold Reservation, who shall, within 10 days thereafter, approve or disapprove the same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within 90 days from the date of enactment, rescind the said ordinance or resolution for any cause, by notifying the Tribal Business Council of his veto.

If the Superintendent shall refuse to approve any resolution or ordinance submitted to him within 10 days after its enactment, he shall advise the Tribal Business Council of his reasons therefor. If those reasons appear to the Council insufficient, it may by a majority vote, refer the resolution or ordinance to the Secretary of the Interior, who may, within 90 days of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

SEC. 5. The Tribal Business Council shall have the following powers, the exercise of which shall be subject to popular referendum as hereinafter provided in this Constitution.

(a) To manage all economic affairs and enterprises of the Three Affiliated Tribes of the Fort Berthold Reservation in accordance with the terms of a charter to be issued to them by the Secretary of the Interior.

(b) To create and maintain a Tribal Business Council Fund by accepting grants or donations from any person, State, or the United States; or by income from tribal enterprises, or by levying assessments of not less than 10 cents nor more than 50 cents per capita on the taxable property of the Three Affiliated Tribes, as required by the performance of such tax to be levied, provided the payment of such per capita levy shall be made before any person shall vote in any election held more than 6 months after the date of said levy.

(c) To administer any funds or property within the exclusive control of the tribe; to make expenditures from available tribal funds for public purposes of the tribe, including salaries or other remuneration of tribal officials or employees. Such salaries or remuneration shall be paid only for services actually rendered. All expenditures from the Tribal Business Council Fund shall be by resolution duly passed by the Council to such effect; and the amounts so paid shall be matters of public record at all times.

(d) To negotiate with the Federal, State and local governments on behalf of the tribe, and to advise and consult with the representatives of the Interior Department on all activities of that department that may affect the Fort Berthold Reservation.

(f) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Three Affiliated Tribes prior to the submission of such estimates or projects to the Bureau of the Budget and to Congress.

(g) To purchase land of members of the organization under condemnation proceedings in courts of competent jurisdiction.

(h) To regulate the inheritance of real and personal property, other than allotted lands, within the territory of their jurisdiction.

(i) To make assignments and leases of tribal lands, and otherwise to manage tribal lands, interests in tribal lands, and property upon such lands, in conformity with Article IX of this Constitution.

(j) To protect and preserve the property, wildlife, and natural resources of the tribes; to regulate hunting and fishing on tribal

lands; and to cultivate and preserve native arts, crafts, culture, ceremonials, and traditions.

(k) To make recommendations to the Superintendent of the Fort Berthold Agency, the Commissioner of Indian Affairs, or the Secretary of the Interior, concerning the appointment and removal of employees assigned to duty on the Fort Berthold Reservation.

(l) To adopt resolutions regulating the procedure of the Tribal Business Council and other tribal agencies and tribal officials of the reservation.

SEC. 6. Likewise subject to popular referendum, the Tribal Business Council may exercise such further powers as may in the future be delegated to the Three Affiliated Tribes of the Fort Berthold Reservation by the Secretary of the Interior or by any other duly authorized official or agency of government.

SEC. 7. Any rights and powers heretofore vested in the three tribes of the Fort Berthold Reservation, but not expressly referred to in this Constitution, shall not be abridged by this Article, but may be exercised by the people of the Fort Berthold Reservation through the adoption of appropriate bylaws and constitutional amendments.

#### ARTICLE VIII--REFERENDUM

Upon a petition signed by at least 10 percent of the qualified voters of each community, demanding a referendum on any proposed or enacted ordinance or resolution of the Tribal Business Council, the council shall call an election and the vote of a majority of the qualified voters voting in such referendum shall be binding upon the Tribal Business Council, provided that at least 30 percent of the eligible voters shall vote in such referendum.

#### ARTICLE IX--LAND

SECTION 1. The Tribal Business Council shall have authority to manage and lease or otherwise deal with tribal lands and resources in accordance with law and to prevent the sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other tribal assets.

SEC. 2. Tribal lands. The unallotted lands of the Fort Berthold Indian Reservation and all lands which may hereafter be acquired by the Three Affiliated Tribes or by the United States in trust for the Three Affiliated Tribes, shall be held as tribal lands and no part of such land shall be mortgaged, sold, or ceded, except as permitted by law and then only with the consent and approval of the

Secretary of the Interior. Tribal land shall not be allotted to individual Indians but may be assigned to members of the Three Affiliated Tribes, or leased, or otherwise used by the tribe as hereinafter provided.

SEC. 3. Leasing of Tribal land - (a) Tribal land may be leased by the Tribal Business Council, with the approval of the Secretary of the Interior, for such periods as permitted by law. (b) Grazing permits covering tribal lands may be issued by the Tribal Business Council, with the approval of the Secretary of the Interior, for such periods of time as permitted by law.

SEC. 4. Assignments of Tribal Land - (a) The Tribal Business Council may by ordinance, approved by the Secretary of the Interior, provide for granting and tenure of assignments of tribal land to members of the tribe. (b) Any member of the tribe who owns an allotment or any share of heirship land or patent-in-fee land may voluntarily transfer his interest in such land to the tribe in exchange for an assignment to the same land or for other land or a proportionate share in other tribal assets.

SEC. 5. Use of Unassigned Tribal Land - Tribal land which is not leased or assigned, including tribal timber lands, shall be managed by the Tribal Business Council subject to the approval of the Secretary of the Interior, for the benefit of the members of the tribe.

SEC. 6. Acquisition of Land by Tribe - The Tribal Business Council of the Three Affiliated Tribes is hereby authorized and empowered to acquire by purchase, exchange of tribal land, relinquishment, or otherwise any lands or interests in land for and on behalf of the Three Affiliated Tribes under such terms as may be agreed upon provided the acquisition is approved by the Secretary of the Interior.

#### ARTICLE X--AMENDMENTS

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the tribe voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty (30) percent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment when requested by a two-thirds (2/3) vote of the Tribal Council, or upon presentation of a petition signed by one-third (1/3) of the qualified voters.

BYLAWS OF THE THREE AFFILIATED TRIBES OF THE FORT  
BERTHOLD RESERVATION

ARTICLE I--DUTIES OF OFFICERS

SECTION 1. The Chairman of the Tribal Business Council shall preside at all meetings of the council and direct the work of its officers. He shall appoint, subject to the approval of the council, such standing committees and special committees and other officers as the business of the tribe may require.

In the absence of the chairman from any regular council meeting or any special meeting regularly called, the vice chairman shall preside in his place, and he shall have all the privileges, duties, and responsibilities of the chairman in his absence.

SEC. 2. The Secretary of the Tribal Business Council shall conduct all correspondence of the council, shall keep all records, minutes of meetings, and an accurate roll of members by communities. He shall receive all petitions, applications and other papers and prepare them for the action of the council. He shall promptly submit a copy of the minutes of each council meeting to the Superintendent of the agency. He shall perform such other clerical duties relating to the business of the council as it may direct.

SEC. 3. The Treasurer of the Tribal Business Council shall accept, receipt for, keep, and safeguard all funds in the custody of the council, whether they be tribal funds or special funds for which the council is acting as trustee or custodian. He shall deposit all such funds in a bank or elsewhere as directed by the council and shall make and keep a faithful record of such funds, and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody to the council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record.

He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Business Council except when he is authorized to do so by resolution duly passed by the council. All checks shall be signed by the Treasurer and shall be countersigned by the Chairman of the Tribal Business Council, and all checks issued prior to July 1, 1940, shall be approved by the Superintendent of the reservation.

The books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the council, and at such other times as the council or the Commissioner of Indian Affairs may direct. The Treasurer shall be required to be under a surety bond satisfactory to the council and to the Commissioner of Indian Affairs.

SEC. 4. The Tribal Business Council, or an election board appointed by it, shall certify to the election of the duly elected council members within 3 days after the election, and the newly elected councilmen who have been certified shall be installed at the first meeting of the Tribal Business Council thereafter, upon subscribing to the oath of office as follows: "I do solemnly swear that I will support and defend the Constitution of the United States and the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation, and will faithfully and impartially discharge the duties of councilman to the best of my ability."

SEC. 5. The duties of all appointed committees and officers shall be clearly defined by resolution of the council at the time of their appointment, and such committees and officers shall report from time to time as required by the council, and their activities and decisions shall be subject to review by the council at any time.

## ARTICLE II--SALARIES

The Tribal Business Council may prescribe such salaries for council members and tribal officers appointed by the council as it deems advisable, from such funds as may be available, provided that no compensation shall be paid to any tribal officer out of any tribal funds except by resolution duly passed and approved by the council, and subject to popular referendum the same as other powers of the council, and further provided that no compensation shall be paid to any tribal officer out of tribal funds under the control of the Federal Government except upon a resolution stating the amount of the compensation and the nature of the services rendered, and said resolution shall be of no effect until approved by the Secretary of the Interior.

## ARTICLE III--MEETING OF COUNCIL

SECTION 1. The regular meetings of the Tribal Business Council shall be held at Elbowoods, N. Dak., on the second Thursday of each month.

SEC. 2. Special meetings may be called by the Chairman or by any three councilmen who shall notify all members of the council at least twenty-four (24) hours before the time of convening such meeting unless a majority of the council approve a shorter call in an emergency.

SEC. 3. Seven members shall constitute a legal quorum of the Tribal Business Council.

SEC. 4. In the absence of the Chairman and Vice Chairman if a quorum is otherwise present, the Secretary shall act as chairman until a temporary chairman is selected.

§30, S. At the first meeting of a newly elected Tribal Business Council, it shall establish by resolution a regular order of business such as: Roll call, reading of minutes of previous meeting, report of Treasurer, report of committees, unfinished business, new business, etc.

#### ARTICLE IV--ADOPTION OF CONSTITUTION AND BYLAWS

This Constitution and attached Bylaws, when adopted by a majority of the qualified voters of the Arickara, Gros Ventres, and Mandan Tribes of the Fort Berthold Reservation, voting at a special election called by the Secretary of the Interior, in which at least 30 percent of those qualified shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in effect from the date of his approval.

#### CERTIFICATION OF ADOPTION

Pursuant to an order, approved March 11, 1936, by the Secretary of the Interior, the attached Constitution and Bylaws was submitted for ratification to the members of the Arickara, Gros Ventres, and Mandan Tribes of the Fort Berthold Reservation and was on May 15, 1936, duly ratified by a vote of 366 for, and 220 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (49 Stat. 378).

GEORGE W. GRINNELL,  
Chairman of Election Board.

AUTHUR MANDAN,  
Chairman of Business Council.

PETER H. BEAUCHAMP,  
Secretary.

W. R. Beyer, Superintendent.

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the act of June 15, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and Bylaws are hereby declared inapplicable to the members of the Three Affiliated Tribes.



All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and Bylaws.

Approval recommended June 3, 1936.

John Collier,  
Commissioner of Indian Affairs.

HAROLD L. ICKES,  
Secretary of the Interior.  
[SEAL]

Washington, D. C., June 29, 1936.

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## PREAMBLE

### A. Considerations.

The purpose of a preamble is to state, at the very beginning of the Constitution, those basic and fundamental purposes for which the Menominee Tribe is establishing the government as set forth in the Articles and Bylaws of the Constitution. Please feel free to add or to modify the following suggested preamble statement as you see fit.

### B. Suggested Provision.

We, the members of the Menominee Indian Tribe of Wisconsin, being a sovereign native people, in order to organize for the common good, to govern ourselves under our own laws and customs, to maintain and foster our tribal culture, to protect our homeland and to conserve and develop its natural resources, do establish and adopt the following Articles of Constitution for the government, protection, and common welfare of the Menominee Tribe of Wisconsin and the members thereof.

### C. Examples.

1. WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the General Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America. [Constitution of the United States.]

2. We, the members of the Nez Perce Tribe of Idaho, in order to exercise our tribal rights and promote our common welfare, do hereby establish this Constitution and Bylaws. [Revised Constitution of the United States, Approved June 27, 1961.]

3. We, the members of the Red Cliff Band of Lake Superior Chippewa Indians in the State of Wisconsin, in order to reestablish our tribal organization; to conserve our tribal property; to develop our common resources; to promote the welfare of ourselves and our descendants; to form business and other organizations; to enjoy certain rights of home rule; and to provide for our people education in vocational and trade schools and institutions of higher learning do ordain and establish this constitution and by-laws. [Constitution of Red Cliff Band of Lake Superior Chippewa Indians, Wisconsin, Approved June 1, 1936.]

4. We, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the State of Wisconsin in order to organize as a tribe for the common welfare of ourselves and our posterity and to insure domestic tranquility; to conserve and develop our natural

resources; to form business and other organizations; to enjoy certain rights of home rule; to provide for our people education in vocational and trade schools and institutions of higher learning; do ordain and establish this Constitution according to the Act of Congress, dated June 18, 1934 (48 Stat. L. 984). [Constitution of the Bad River Band of the Laker Superior Tribe of Chippewa Indians of the State of Wisconsin, Approved June 20, 1936.]

5. We, the Minnesota Mdewakanton Sioux residing on the Prairie Island Reservation under the Pipestone jurisdiction in the State of Minnesota, in order to form a more perfect union, develop our natural resources, insure our domestic tranquility, promote the general welfare, to enjoy certain rights of home rule, to provide education in schools of higher learning including vocational, trade, high schools, and colleges for our people, and to secure the opportunities offered us under the Indian Reorganization Act, do hereby establish the following Constitution and Bylaws; and we solemnly affirm that it is our earnest intention faithfully to support, respect, and promote the integrity of the Constitution of the United States and the Constitution of the State of Minnesota, together with all laws pertaining thereto which are the constituted authority of our commonwealth. [Constitution of the Prairie Island Indian Community in Minnesota, Approved June 20, 1936.]

6. We, the L'Anse, Lac Vieux Desert and Ontonagon Bands of Chippewa Indians, residing within the original confine of the L'Anse Reservation, in order to organize as a tribe for the common welfare of ourselves and our posterity, to insure domestic tranquility, to conserve and develop our natural resources; to form business and other organizations, to establish a credit system, to enjoy certain rights of home rule, do ordain and establish this Constitution and By-laws, for our Community which shall be known as the Keeweenaw Bay Indian Community. [Constitution of the Keeweenaw Bay Indian Community, Michigan, Approved December 17, 1936.]

7. We, the Minnesota Chippewa Tribe, consisting of the Chippewa Indians of the White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians, in order to form a representative Chippewa tribal organization, maintain and establish justice for our Tribe, and to conserve and develop our tribal resources and common property; to promote the general welfare of ourselves and descendants, do establish and adopt this Constitution for the Chippewa Indians of Minnesota in accordance with such privilege granted the Indians by the United States under existing law. [Revised Constitution of the Minnesota Chippewa Tribe, Approved March 3, 1964.]

SEC. 6. All sessions of the tribal council (except executive) shall be open to all members of the tribe. Balloting at all sessions shall be either by acclamation or by secret written ballot, as the presiding officer shall direct.

SEC. 7. The council may, upon motion duly passed, go into executive sessions. At such sessions all persons shall be excluded from the council chamber, and any such person whose presence shall be required before the council shall be designated by the chairman, and no other persons shall be allowed to be present other than the members of the council and the secretary.

SEC. 8. The order of business at any regular or special meeting of the tribal council shall be as follows:

- (a) Council called to order for session.
- (b) Roll call.
- (c) Prayer by an authorized person.
- (d) Opening address by the presiding officer or by others.
- (e) Reading and acceptance of minutes of previous meetings.
- (f) Reports of standing committee.
- (g) Report of council treasurer.
- (h) Report of the special committees.
- (i) Reports of the board of directors or advisors.
- (j) Report of the board of directors or advisors.
- (k) Impeachment trials.
- (l) Installation of new officers.
- (m) Unfinished business.
- (n) New business.
- (o) Appointment of committees and directors.
- (p) Adjournment.

SEC. 9. It shall be the duty of the council to exercise care and caution to the end that a complete record is preserved of all acts of the council and of all committees appointed therefrom. Accurate copies of all such records shall be preserved in the files of the council and accurate copies of all necessary records shall be transmitted to such bureaus, departments, or elsewhere as may be required.

SEC. 10. All records of the council and its committees or delegates shall at all times be a matter of public record, and any member of the Cheyenne River Sioux Tribe or his authorized representative, or any properly authorized officer or employee of any Government department shall have full access to same during business hours. However, it is provided that matters before the council while in executive session shall be, at the option of the council, withheld from the public or from individuals or their representatives, until after same shall have acted upon or otherwise quietly disposed of.

SEC. 11. Copies of all leases, contracts, deeds, or assignments and all other papers or documents pertaining to lands of any nature on the reservation shall be carefully preserved by the council, and insofar as it is possible all other documents affecting the rights and equities of the tribe as a whole, or the individual members thereof, shall be kept and preserved in order that such information shall at all times be available to the council and to the individual members of the tribe; and duplications of all such documents shall be deposited in the files of one agency.

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#### Example 7

### ARTICLE III - MEETINGS OF THE COUNCIL

SECTION 1. First Meeting. At the first meeting of the Council after a regular election, the Council shall see that all members have a correct and clear understanding of the Constitution and By-laws and the management of the tribal and reservation affairs, as well as the rules for the conduct of their own body.

SEC. 2. Regular Meeting. The Council shall meet officially on regular meeting dates which shall be on the first Tuesday in each month at nine o'clock a.m. In case the time of the regular Council meeting on the first Tuesday of each month should conflict with a national, state or tribal election, or shall fall on a holiday, the meeting shall be held on the following Wednesday.

SEC. 3. Special Meetings. Special meetings of the Council may be called by the Chairman, or the Chairman shall call a special meeting upon written request of three or more members of the Council.

SEC. 4. Conduct of Business. In the conduct of business, recognized rules of order shall apply. Voting at the Council meeting may be by voice, but at the discretion of the Chairman or upon the request of any two members of the Council a secret vote shall be taken.

SEC. 5. Quorum. Matters of business for the Council shall be decided by a majority vote. A quorum (a number competent to transact business) of the Council shall be constituted if six or more members are present.

SEC. 6. Restriction of Voting in the Council. If any matter coming before the Council which involves the Indian Bureau or any person or company, no member of the Council that may be permanently connected with the party so involved shall be permitted to vote without the special consent of the remaining members of the Council.

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Example 8

Section 2.11. Procedure.

(a) Meetings. The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. Special meetings may be held on the call of the mayor or of four or more members and, whenever practicable, upon no less than twelve hours' notice to each member. All meetings shall be public; however, the council may recess for the purpose of discussing in a closed or executive session limited to its own membership any matter which would tend to defame or prejudice the character or reputation of any person, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the council until the matter is placed on the agenda.

(b) Rules and Journal. The council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. No action of the council, except as otherwise provided in the preceding sentence and in section 2.06, shall be valid or binding unless adopted by the affirmative vote of four or more members of the council.

IV. SECTION 2 - ACTION BY THE TRIBAL COUNCIL:  
ORDINANCES, RESOLUTIONS, AND MOTIONS

A. Considerations.

The purpose of this section is to assure tribal members that they will have the fullest opportunity to participate in important decisions of the tribal council in the exercise of the powers entrusted to it. The council will have the power to enact laws which will essentially be limitations upon the behavior of the tribal members. In addition, the council will have the power to make decisions and take action which will be binding upon the Tribe insofar as relations with other governments or private parties is concerned. Thus, this section is intended to set forth certain basic safeguards with which the tribal council must comply before any decision it makes or any action it takes is binding as legal action of the tribe. These safeguards will assure tribal members that they will have full notice and full opportunity to influence and participate in the decision making process of the tribal council.

Usually, such safeguards are only applicable to the more important decisions or actions of the tribal council. Thus, the safeguards are usually not made applicable to the less important decisions which are made by tribal councils, for example, the adjournment of meetings, or the kind of stationery the council should have, or the insignia that will be on the stationery, or whether the Chairman should go to a particular meeting. Generally, actions or decisions of the council which are of a temporary nature or which do not have a substantial impact on the tribal members could be taken by action not subject to the safeguards of this article.

Usually, this section first states that the council may act only by ordinance (or legislation), resolution, or motion. Action by ordinance or legislation would be required for all matters of an important or permanent nature. All other actions, unless specifically provided otherwise in the Constitution, may be in the form of a resolutions or motions. The procedure regarding resolutions and motions could be left to the judgment of the council to be incorporated in its internal rules of procedure.

B. Questions.

1. Should there be a provision which sets forth the manner in which the council may act, and safeguards which must be complied with regarding such actions? Should these kinds of actions be ordinances, resolutions, and motions?

2. Should the Constitution list certain kinds of matters which must be acted upon by ordinance, as opposed to resolution and motion, for example, levying a tax, creating a debt appropriating tribal money, establishing criminal or civil penalties, selling, mortgaging, leasing, or otherwise encumbering tribal lands?



3. Should a specific form in which ordinances must appear be set forth? This is a safeguard in that an ordinance should thus be immediately recognizable as an important action of the tribal council which should be carefully considered.

4. What should the procedure be for action by ordinance?

- a. Should an ordinance be allowed to be introduced at either a regular or a special meeting of the council? The accepted practice is to allow introduction of ordinances at both regular and special meetings.
- b. Who should be able to introduce an ordinance - anyone member of the council? Any two members?
- c. Should the ordinance be read at the meeting at which it is introduced in full, or should copies of the ordinance be made available not only to the council. A requirement that proposed ordinances be read about may be impractical if the ordinance is lengthy, but you might consider requiring that the ordinance be summarized aloud before adoption. You might also consider requiring the summary of the ordinance be translated aloud into Menominee before adoption.
- d. What should happen after the ordinance is introduced? Should the council be allowed to approve it at the same meeting at which it is introduced? Should the ordinance be required to be posted and/or published in full or by title? Should the ordinance receive some sort of approval by the council prior to being posted or published?
- e. Should a public hearing be required to be held on the ordinance? If so, how soon should such a hearing be set up? Should some sort of notice requirement be set forth for the hearing, that is, should the date and topic be posted and/or published?
- f. How should the ordinance be publicized as finally adopted? Should it be posted as well as published in full, or by title?

- g. Shall ordinances take effect on the date adopted unless otherwise specified in the ordinance? Or shall the constitution provide that ordinances shall take effect after the expiration of certain number of days? How many days? This is generally anywhere from 5 to 60 days after adoption.
- h. Should the council be allowed to amend the ordinance at a meeting subsequent to the public hearing?

5. Should a special voting requirement be included requiring a vote of a majority of all elected members, as opposed to a majority of the quorum. Or should a higher vote be required such as 3/4 of the elected members?

6. Should there be a provision for emergency ordinances? Such ordinances may be necessary for the immediate preservation of tribal property, health, peace, or safety. The ordinances would take effect immediately upon adoption by council. Should there be a special voting provision for emergency ordinances such as perhaps a unanimous vote requirement? Should the council be required to state the facts showing such emergency? Should there be certain kinds of actions which are absolutely prohibited from being the subject of emergency ordinances, such as levying taxes? Should the emergency ordinance be effective only for a limited number of days at which time it shall automatically expire unless re-enacted if the emergency still exists? Should there be requirements for publication of the ordinance? (Generally, emergency ordinances are exempted from most of the publication and notice requirements applicable to the passage of ordinary ordinances except as specifically made applicable.)

7. Should the council be required to keep an accurate public record of all ordinances passed?

8. Should there be a special provision which would allow the adoption by reference of entire codes, thus exempting the codes from any publication requirements? For example, the tribe may want to adopt a technical code relating to building requirements. Such codes are now in existence, have been written by technical experts, and are normally quite lengthy. An "adoption by reference" provision in the constitution would permit the council to adopt the technical code by reference without having to publish the entire code.

9. Should the ordinances, enacted by the tribal council, be subject to review by the Secretary of the Interior? Many tribal constitutions have this requirement, although it need not be included in the constitution.

C. Examples.

ACTION BY THE TRIBAL COUNCIL

Example 1

ARTICLE 7 -- LEGISLATION

Section 7.1 - Prior City Legislation:

All valid laws, ordinances, including existing emergency ordinances, and resolutions of the City which are not inconsistent with this Charter and which are in force and effect at the time of the effective date of this Charter shall continue in full force and effect until repealed or amended. Those provisions of any effective valid law, ordinance or resolution which are inconsistent with this Charter shall be repealed.

Section 7.2 - Ordinances, Resolutions and Motions:

The Council shall act only by ordinance, resolution or motion. All legislative enactments of a permanent nature shall be by ordinance; all other actions, except as provided in this Charter, may be in the form of resolutions or motions. All ordinances and resolutions shall be confined to one subject, except in case of repealing ordinances. Ordinances making appropriations shall be confined to the subject of appropriation, but may include more than one appropriation.

Section 7.3 - Action by Ordinance Required:

In addition to such acts of the Council as are required by other provisions of this Charter to be by ordinance, every act making an appropriation, creating an indebtedness, authorizing borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property without the consent of the owner, shall be by ordinance.

Section 7.4 - Voting:

The vote by "yes" or "no" shall be taken upon the passage of all ordinances, resolutions and motions, and entered upon the minutes of the Council proceedings. Except as provided in Section 7.7, every ordinance shall require the affirmative vote of the majority of the membership of the entire Council for final passage. Resolutions and motions shall require the affirmative vote of a majority of the members present. No member of the Council shall vote on any question in which he has a conflict of interest, other than the common public interest, or on any question concerning his conduct, but on all other questions each member who is present shall vote when his name is called unless

excused by the unanimous consent of the remaining members present. Any member refusing to vote except when not so required by this Charter, shall be considered delinquent in his duties and an affirmative vote shall be cast and recorded in his name.

#### Section 7.5 - Form of Ordinances:

Every ordinance shall be introduced in written or printed form. The enacting clause of all ordinances shall be: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO. Every ordinance introduced shall be deemed to contain a severability clause, whether stated therein or not.

#### Section 7.6 - Procedure:

Except for emergency ordinances and ordinances making general codification of existing ordinances, the following procedure for enactment of ordinances shall be followed:

(a) The ordinance shall be introduced at any regular or special meeting of the Council by any member thereof.

(b) The ordinance shall be read in full or, in cases where copies of the ordinance are available to the Council and are, or have been made available to the public, said ordinance may be read by title only.

(c) After the first reading of the ordinance, the same shall be approved with or without amendment, rejected, or tabled by vote of the Council.

(d) If the ordinance is approved on first reading, it shall be posted and published in full or by title, unless otherwise provided in this Charter. The Council shall hold a public hearing on the ordinance not earlier than four (4) days after first publication, and notice of said public hearing, specifying the day, hour, and place of the same, shall be included in the posting and first publication.

(e) If the ordinance is tabled, it shall be reconsidered at subsequent meetings until it is approved with or without amendment, or rejected, by vote of the Council.

(f) The ordinance shall be introduced and read, in the manner provided in Section 7.6(b), a second time at the public hearing for final approval, rejection, or other actions as may be taken by vote of the Council.

(g) Except as otherwise provided in this Charter, an ordinance shall be posted and published, in full or by title, after final passage, and if amended subsequent to its last posting and publication, shall state that the same has been amended and shall contain a summary of the subject matter of said amendment.

(h) All ordinances shall take effect five (5) days after publication following final passage, except as otherwise provided in this Charter.

#### Section 7.7 - Emergency Ordinances:

Emergency ordinances for the preservation of public health, welfare, peace, safety, or property shall be approved

by a majority vote of the Councilmen present at any meeting at which the said emergency ordinance is introduced. The facts showing such urgency and need shall be specifically stated in the ordinance itself. No ordinance making a grant of any special privilege or fixing rates charged by any City-owned utility shall ever be passed as an emergency ordinance. No ordinance authorizing borrowing money or incurring indebtedness, except as provided in Section 9.10(b), shall ever be passed as an emergency ordinance. An emergency ordinance shall take effect upon passage and for information purposes shall be posted or published in full immediately after passage. An emergency ordinance shall not be in effect longer than ninety (90) days after passage, and shall not again be passed as an emergency ordinance.

#### Section 7.8 - Codification:

The Council shall cause the ordinances to be codified and thereafter maintained in current form. Each Council shall review the ordinances and examine them for current need. The Council may, by ordinance, prescribe the procedures for the enactment and any requirements for public notice of ordinances making general codification of existing ordinances.

#### Section 7.9 - Codes:

Standard codes, promulgated by the Federal Government, the State of Colorado or by any agency of either of them, or by any municipality within the State of Colorado, or by recognized trade or professional organizations, or amendments or revisions thereof, may be adopted with or without amendment by reference thereto in an enacting ordinance and without reading and publishing or posting such codes in full. Such primary code, thus adopted, may in turn adopt by reference, in whole or in part, any secondary codes duly described therein. However, the title of every primary code and every secondary code which is incorporated in any such adopting ordinance, shall be specified in the title of the adopting ordinance. The enactment of ordinances adopting any said code or codes shall be as provided in Section 7.6 herein, and the posting and publication thereof shall advise that copies and amendments are available for inspection at the office of the City Clerk. Any penalty clause in said codes may be adopted only if set forth in full in the adopting ordinance, and the same shall be posted and published along with the adopting ordinance or the title thereof.

#### Section 7.10 - Amendment or Repeal:

No ordinance, section or subsection thereof shall be amended, superseded, or repealed except by an ordinance regularly adopted. No ordinance shall be amended by reference to its title only. The revised sections or subsections of the ordinances, as amended, shall be re-enacted. However, an ordinance, section or subsection thereof may be repealed by reference to its title and ordinance or code number only.

Section 7.11 - Posting and Publication by Reference  
or Title:

Whenever an ordinance shall be posted or published by reference or by title, the posting and publication shall contain a summary of the subject matter of said ordinance and shall contain a notice to the public that copies of the proposed ordinance are available at the office of the City Clerk. The posting and publication of any ordinance by reference or by title as provided herein must set forth in full any penalty clause contained in said ordinance.

Section 7.12 - Disposition of Ordinances:

An ordinance as adopted shall be authenticated by the signature of the Council President and the City Clerk. A true copy of every such authenticated ordinance shall be numbered and recorded in the official records of the City. Attached to each ordinance and made a part thereof, shall be the certificate of publication or certification by the City Clerk that the same has been posted.

Document 22

Example 2

5.7 Action by Ordinance Required. In addition to such acts of the Council as required by other provisions of this Charter to be by ordinance, every act making an appropriation creating an indebtedness, authorizing borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance.

5.8 Form of Ordinance. Every ordinance shall be introduced in written or printed form. The enacting clause of all ordinances shall be BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO. Except as otherwise provided in this article, all ordinances shall take effect five days after publication following final passage.

Procedure. Except for an emergency ordinance, an ordinance making general codification of ordinances, or ordinances adopting standard codes, the following procedure shall be followed:

(a) Introduction at any regular or special meeting by any member of the Council.

(b) Reading in full or by titled where copies are available to the Council and those in attendance.

(c) Approval or rejection on first reading by a roll call vote of the Council.

(d) If passed on first reading, it shall be published in full unless otherwise provided in this Charter. Council shall set a day, hour, and place at which Council shall hold a public hearing thereon, which shall be included in the publication.

(e) Introduction a second time, at a meeting not earlier than seven days after publication, for the final passage, rejection, or other action by a roll call vote of the Council. Such meeting may be the same meeting at which the public hearing on the bill is held.

(f) An ordinance may be amended before final passage by a roll call vote of the Council.

(g) Unless otherwise provided in this Charter, an ordinance, if amended, shall be published in full after final passage. If not amended, it shall be published either by title or in full as the Council may determine.

(h) The Council shall hold a public hearing before final passage of any ordinance, except as provided in Section 5.9.

(i) Any publication by reference shall contain a summary of the subject matter of the ordinance and a notice that copies of the ordinance are available at the office of the City Clerk.

5.9 Emergency Ordinances. Emergency ordinances for the preservation of public property, health, peace, or safety shall be approved only by the unanimous vote of Councilmen present. The facts showing such urgency and need shall be specifically stated in the measure itself. No ordinance making a grant of any special privilege, levying taxes, or fixing rates charged by any city-owned utility shall ever be passed as an emergency measure. Neither a public hearing, nor a first publication as provided in Section 5.8(d), shall be required. An emergency ordinance shall take effect upon passage. Publication shall be within 10 days, or as soon thereafter as possible. No ordinance shall receive final passage at the same meeting it is introduced.

5.10 Codification. The Council shall cause the ordinances to be codified and maintained thereafter in current form. Revisions to the codes may be accomplished by reference as provided in Section 5.11.

5.11 Codes. Standard codes, promulgated by the Federal Government, the State of Colorado, or by an agency of either of them, or by any municipality within the State of Colorado, or by recognized trade or professional organizations, or amendments or revisions thereof, may be adopted by reference; provided the publication of the bill or ordinance adopting any said code shall advise that copies thereof are available for inspection at the office of the City Clerk, and provided that any penalty clause in said codes

may be adopted only if set forth in full and published in the adopting ordinance.

- 5.12 Disposition of Ordinances. A true copy of every ordinance, as adopted by Council shall be numbered and recorded in the official records of the City. Its adoption and publication shall be authenticated by the signature of the Mayor, or Mayor Pro-tem, and the City Clerk, and by the certificate of publication. A true copy of every ordinance, as adopted by the vote of the qualified electors of the City, shall be separately numbered and recorded commencing with Peoples' Ordinance No. 1.

Document 23.

Example 3

CHAPTER VIII  
LEGISLATION

- 8.1 PRIOR CITY LEGISLATION. All valid by-laws, ordinances, resolutions, rules and regulations of the City which are not inconsistent with this Charter and which are in force and effect at the time of the effective date of this Charter shall continue in full force and effect until repealed or amended. If any such ordinance, resolution, rule or regulation provides for the appointment of any officers or any members of any board or commission by the Mayor, such officers or members of any board or commission shall, after the effective date of this Charter, be appointed by the Council, except as provided in this Charter. Those provisions of any effective valid by-law, ordinance, resolution, rule or regulation which are inconsistent with this Charter are hereby repealed.
- 8.2 ORDINANCES AND RESOLUTIONS, AND MOTIONS. In all legislative matters coming before it, the Council shall act by ordinance, resolution or motion. In addition to such acts of the Council as are required by this Charter to be by ordinance, every act making an appropriation, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a fine or jail penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance.
- 8.3 FORM OF ORDINANCES. All ordinances shall be introduced in written form and no ordinance or section thereof shall be amended or repealed except by an ordinance regularly adopted. The enacting clause of all ordinances shall be: "Be it ordained by the City Council of the City of



Thornton, Colorado."

8.4 PROCEDURE FOR PASSAGE OF ORDINANCES.

(a) An ordinance may be introduced at any regular or special meeting and shall be read in full at the time it is introduced. It may be passed on first reading by the affirmative vote of not less than a majority of the members elected to the Council at the meeting at which it is introduced.

(b) After the passage of an ordinance on first reading, the ordinance shall be posted and the title published as required in this Charter.

(c) No ordinance may be passed on second and final reading earlier than ten days after the first reading, provided this provision shall not apply to emergency ordinances.

(d) An ordinance may be read by title only for its second reading at any regular or special meeting. It may be passed on second and final reading by the affirmative vote of not less than a majority of the members elected to the Council. An ordinance may be amended after first reading and passage and before second reading and final passage, provided said amendment or amendments do not change the stated purpose or the ordinance. The text of any such amendment or amendments shall be read in full.

(e) The effective date of all ordinances shall be on the date of final passage unless another date is prescribed therein.

(f) The yes and no votes shall be taken upon the passage of all ordinances, resolutions, and motions and entered upon the journal of the Council proceedings. Should any Councilman being present refuse to vote on any measure, his vote shall be recorded in the affirmative. A Councilman shall be excused from voting on matters involving the consideration of his own official conduct, or where his financial interests are involved.

(g) After the final passage of an ordinance, the ordinance shall be posted and the title published as required in this Charter.

8.5 PASSAGE OF EMERGENCY ORDINANCES. An ordinance which is declared therein to be an emergency ordinance which is immediately necessary for the preservation of the public peace, health, or safety may be enacted at the regular or special meeting at which it is introduced by seven affirmative votes without any requirement of prior posting or publication and without any requirement of a second reading and passage. Such emergency ordinances, after passage, shall be posted and the title published as required by this Charter.

8.6 POSTING AND PUBLICATION. The full text of each ordinance after passage on first reading and before second reading and final passage, and after second reading and final passage, shall be posted in the six public places in the City as such places are designated by resolution of the

Council. The title of each ordinance and a statement that the ordinance is on file in the City Clerk's office for public inspection shall be published in a newspaper legally qualified for City publications as provided in this Charter after first passage and before second passage and again after second and final passage.

- 8.7 AMENDMENT OR REPEAL. No ordinance, section or sub-section thereof shall be amended, superceded, or repealed except by an ordinance regularly adopted.

No ordinance shall be amended by reference to its title only, but the revised sections or sub-section of the ordinance, as amended, shall be re-enacted. However, an ordinance, section or sub-section thereof may be repealed by reference to its title and ordinance or code number only.

- 8.8 RECORDING OF ORDINANCES. All ordinances shall be recorded by the Clerk in a book called "The Ordinance Book" and it shall be the duty of the Mayor and Clerk to authenticate such records by their official signatures thereon, but the failure to so record and authenticate such ordinance shall not invalidate it or suspend its operation.

- 8.9 PENALTIES FOR VIOLATION OF ORDINANCES. Any ordinance may provide for the punishment of those who violate its provisions. The punishment for the violation of any ordinance shall not exceed a fine of three hundred dollars or imprisonment for ninety days, or both, in the discretion of the Municipal Court.

- 8.10 ADOPTION BY REFERENCE.

(a) The City is hereby authorized to enact any ordinance which adopts any code by reference, in whole or in part; and such primary code, thus adopted, may in turn adopt by reference, in whole or in part, any secondary codes duly described therein. However, the title of every primary code and every secondary code which is incorporated in any such adopting ordinance, shall be specified in the title of the ordinance.

(b) After the first reading of the adopting ordinance, the Council shall schedule a public hearing concerning the adopting ordinance and of the code and any secondary codes to be adopted thereby. Notice of the hearing shall be published twice in a newspaper meeting the requirements for publication of ordinances, once at least eight days preceding the hearing, and once at least fifteen days preceding it. The notice shall state the time and place of the hearing, that copies of the adopting ordinance, of the primary code, and also copies of the secondary codes, if any, being considered for adoption, are on file with the City Clerk and are open to public inspection.

The notice shall also contain a description which the Council deems sufficient to give notice to interested persons of the purpose of the code and of any secondary code incorporated thereby by reference, the subject matter of each such code, the name and address of the agency by which each has been promulgated, or if a municipality, the corporate name of such municipality which has enacted such code, and the date of publication of such code or codes, and in the case of a code of any municipality, the notice shall contain a specific reference to the code or codes of a given municipality as they existed and were effective at a given date.

(c) After the hearing, the Council may amend, adopt or reject the adopting ordinance in the same manner in which it is empowered to act in the case of other ordinances; provided, nothing in this Charter shall be deemed to permit the adoption by reference of any penalty clause which may appear in any code which is adopted by reference. Any such penalty clause may be enacted only if set forth in full in the adopting ordinance. It is further provided that all changes or additions to any code made by the Council shall be set out in full in the adopting ordinance.

(d) The adopting ordinance shall be posted and the title of the ordinance shall be published as is provided in the case of any other ordinance. Not less than three copies of the adopting ordinance together with three copies of each primary code, and of each secondary code pertaining thereto, all certified to be true copies by the Mayor and the City Clerk, shall be on file in the office of the City Clerk prior to the enacting of the adopting ordinance on first reading and shall remain on file prior to the public hearing and following adoption after the public hearing. Following the adoption of any code, the City Clerk shall at all times maintain a reasonable supply of copies of the primary code and of any secondary code incorporated in it by reference, available to the public at a moderate price. The Council shall not be required to read the code test at the meetings at which the adopting ordinance is passed on first and second readings, provided said codes and primary codes, if any, are on file in the office of the City Clerk, as herein provided.

(e) If, at any time, any code which the City has previously adopted by reference, shall be amended by the agency or municipality which originally promulgated, adopted, or enacted it, then the Council may adopt such amendment by reference through the same procedure as required for the adoption of the original code; or an ordinance may be enacted in regular manner setting forth the entire text of such amendment.

(f) Copies of such codes in published form, duly certified by the City Clerk and the Mayor of the City, shall

be received without further proof as prima facie evidence of the provisions of such codes or public records in all courts and administrative tribunals of this State.

- 8.11 DEFINITIONS. As used in the text of this Charter, the following terms shall have the meanings indicated, unless the context requires otherwise:

(a) "Code" shall mean any published compilation of statutes, ordinances, rules, regulations, or standards adopted by the Federal government or the State of Colorado, or by an agency of either of them, or by any municipality within the State of Colorado, or by an agency of either of them, or by any state or nationally recognized organization, institution or agency, such as but not limited to the Pacific Coast Building Officials Conference and the National Fire Protection Association. It shall include any condification or compilation of existing ordinances of the adopting municipality.

(b) "Primary Code" shall mean any code which is directly adopted by reference in whole or in part by any ordinance passed pursuant to this Charter.

(c) "Secondary Code" shall mean any code which is incorporated by reference, directly or indirectly, in whole or in part, in any primary code or in any secondary code.

- 8.12 SEVERABILITY OF ORDINANCES. If any portion of an ordinance or the application thereof to any person or circumstances shall be found to be invalid by a Court such invalidity shall not affect the remaining portions or applications of the ordinance which can be given effect without the invalid portion or application provided such remaining portions or applications are not determined by the Court to be inoperable, and to this end ordinances are declared to be severable. Each ordinance shall be deemed to have include as a part of it this severability provision even though this severability provision is not set out in the ordinance, unless an ordinance shall expressly provide that this severability provision is not applicable.

- 8.13 CODIFICATION OF ORDINANCES. The Council may direct and complete the codification of all ordinances of the City and shall provide for the subsequent amendments thereto so that such amendments may readily be made a part of such published code and maintained thereafter in current form. Any such codification may originally include provisions not previously contained in ordinances of the City.

The Council shall provide for making copies of the codification available for public inspection and for distribution to the public at a reasonable charge therefor and shall publish notice of the printing and availability of such codification before the effective date thereof. Such printing

and making available of the codification and notice thereof shall constitute publication of any such codification, other provisions of this Charter for publication notwithstanding.

The copies of the ordinances and of the codification thereof, and of provisions adopted by reference in accordance with Section 8.10 may be certified by the Clerk, and when so certified, shall be competent evidence in all Courts and other legally established tribunals as to the matter contained therein.

Document 24

Example 4

ARTICLE VII - ORDINANCES AND RESOLUTIONS

SECTION 1. All final decisions of the Washoe Tribal Council on matters of general and permanent interest to the members of the tribe shall be embodied in ordinances.

SEC. 2. All final decisions of the Washoe Tribal Council on matters of temporary interest or relating especially to particular individuals or officials, shall be embodied in resolutions. All Washoe Tribal Council legislation, minutes of Washoe Tribal Council meetings, and tribal financial records shall be open to inspection by any member of the Washoe Tribe, at such times as found convenient to the council.

SEC. 3. All questions of procedure (such as acceptance of committee reports or invitations to outsiders to speak) shall be decided by action the Washoe Tribal Council or by the ruling of the Chairman if no objection is heard. In all ordinances, resolutions, or motions, the Washoe Tribal Council may act by majority vote, but all matters of importance shall be fully discussed and a reasonable attempt shall be made to secure unanimous agreement.

SEC. 4. Every resolution shall begin with the words: "Be it resolved by the Washoe Tribal Council."

SEC. 5. Every ordinance or resolution shall contain the authority (statute, tribal constitution, etc.) for the Washoe Tribal Council's legislative action.

Document 42

Example 5

ARTICLE IV - ORDINANCES AND RESOLUTIONS

SECTION 1. All ordinances and resolutions shall be recorded and available at all times for the information and education of the band.

SECTION 2. Every ordinance shall begin with the words: "Be it enacted by the community council of the Tuolumne Band of Me-wuk Indians,".

SECTION 3. Every resolution shall begin with the words: "Be it resolved by the community council of the Tuolumne Band of Me-wuk Indians,".

Document 35

Example 6

Section 2.12. Action Requiring an Ordinance.

In addition to other acts required by law or by specific provision of this charter to be done by ordinance, those acts of the city council shall be by ordinance which:

(1) Adopt or amend an administrative code or establish, alter or abolish any city department, office or agency;

(2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed;

(3) Levy taxes, except as otherwise provided in Article V with respect to the property tax levied by adoption of the budget;

(4) Grant, renew or extend a franchise;

(5) Regulate the rate charged for its services by a public utility;

(6) Authorize the borrowing of money;

(7) Convey or lease or authorize the conveyance or lease of any lands of the city;

(8) Adopt with or without amendment ordinances proposed under the initiative power; and

(9) Amend or repeal any ordinance previously adopted,

except as otherwise provided in Article VIII with respect to repeal of ordinances reconsidered under the referendum power.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.

### Section 2.13. Ordinances in General.

(a) Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The city of \_\_\_\_\_ hereby ordains...." Any ordinance which repeals or amends an existing ordinance or part of the city code shall set out in full the ordinance, sections or subsection to be repealed or amended, and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics.

(b) Procedure. An ordinance may be introduced by an member at any regular or special meeting of the council. Upon introduction of any ordinance, the city clerk shall distribute a copy to each council member and to the manager, shall file a reasonable number of copies in the office of the city clerk and such other public places as the council may designate, and shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the council. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing the council may adopt the ordinance with or without amendment or reject it but, if it is amended as to any matter or substance, the council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance. As soon as practicable after adoption of any ordinance, the clerk shall have it published again together with a notice of its adoption.

(c) Effective Date. Except as otherwise provided in this charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

(d) "Publish" Defined. As used in this section, the term "publish" means to print in one or more newspapers of general circulation in the city: (1) the ordinance or a brief summary thereof, and (2) the places where copies of it have been filed and the time when they are available for public inspection.

#### Section 2.14. Emergency Ordinances.

To meet a public emergency affecting life, health, property or the public peace, the council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by a public utility for its services or authorize the borrowing of money except as provided in subsection 5.09(b). An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least five members shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such later time as it may specify. Every emergency ordinance except one made pursuant to subsection 5.09(b) shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

#### Section 2.15. Codes of Technical Regulations.

The council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

(1) The requirements of section 2.13 for distribution and filing of copies of the ordinance shall be construed to include copies of the code of technical regulations as well as of the adopting ordinance, and

(2) A copy of each adopted code or technical regulations as well as of the adopting ordinance shall be authenticated and recorded by the city clerk pursuant to subsection 2.16(a).

Copies of any adopted code of technical regulations shall be made available by the city clerk for distribution or for purchase at a reasonable price.

#### Section 2.16. Authentication and Recording, Codification; Printing

(a) Authentication and Recording. The city clerk shall authenticate by his signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions



adopted by the council.

(b) Codification. Within three years after adoption of this charter and at least every ten years thereafter, the council shall provide for the preparation of a general codification of all city ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the council by ordinance and shall be published promptly in bound or loose-leaf form, together with this charter and any amendments thereto, pertinent provisions of the constitution and other laws of the state of \_\_\_\_\_, and such codes of technical regulations and other rules and regulations as the council may specify. This compilation shall be known and cited officially at the \_\_\_\_\_, City Code. Copies of the code shall be furnished to city officers, places in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the council.

(c) Printing of Ordinances and Resolutions. The council shall cause each ordinance and resolution having the force and effect of law and each amendment to this charter to be printed promptly following its adoption, and the printed ordinances, resolutions and charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the council. Following publication of the first \_\_\_\_\_ City Code and at all times thereafter, the ordinances, resolutions and charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the constitution and other laws of the state of \_\_\_\_\_, or the codes of technical regulations and other rules and regulations included in the code.

## V. TRIBAL MEETINGS

### A. Questions.

Should there be a specific constitutional provision providing for regular tribal meetings? What would be the purpose of these tribal meetings? Should the precise date for them be fixed? If so, when should these meetings be? What procedure should be followed in calling these meetings? Should the procedure be set forth in the Constitution or by ordinance of the council or by some other procedure.

### B. Examples.

#### Example 1

#### ARTICLE IV - MEETINGS OF THE TRIBE

SECTION 1. The Council shall from time to time call meetings of all voters of the Tribe to lay before them such matters as may come before such a general meeting. A general meeting of the Tribe shall be called upon request of a majority of the qualified voters of any district.

Document 39

#### Example 2

SEC. 3. Annual meetings of the tribal membership shall be held on the second Tuesday in May for the purpose of receiving reports and transacting any other business which may come regularly before the tribe.

SEC. 4. Special meetings of the tribe may be called at the discretion of the chairman and shall be called by him upon the written request of a majority of the Business Committee or upon the written request of twenty-five members of the tribe, provided, that at least ten days' notice shall be given in each instance.

SEC. 5. The principal object of a special tribal meeting must be stated in the notice and may include the words "and for the transaction of any other business that may be presented." Unless these words are added no other business can be transacted except for the object stated in the notice.

Document 41

Example 3

SEC. 2. Time and procedures of general meetings of the Band shall be stated in ordinance or resolution form, provided a general meeting of the Band is scheduled at least once every year.

Special meetings of the Band shall be called by the Chairman, in writing, upon his own initiative, upon request of three members of the Governing Board, or upon a petition signed by at least 50 members of the Band 21 years of age and over.

In the absence of the Chairman and Vice-Chairman at a special or general meeting of the Band, there shall be an Acting Chairman elected by the qualified voters of the Band in attendance to preside at the particular meeting. Any qualified voter or representative of the Federal Government may preside during the election of the Acting Chairman.

Document 2

## MEMBERSHIP

### I. CONSIDERATIONS

The purpose of a membership provision is to establish those basic requirements which a person must meet in order to be a member of the Tribe. All tribal constitutions have a membership provision. Although it is possible simply to draft a brief provision imposing upon the tribal council the duty to enact legislation establishing tribal membership requirements, every tribe has chosen to establish membership requirements in their constitutions. The reason for this is that unlike state governments and the federal government, Indian tribal membership, or citizenship, has since time immemorial been based upon more than simply residence within a defined territory, although that is one possible requirement for tribal membership. But more than that, Indian tribes have traditionally identified their members by certain other important characteristics and beliefs shared by all the members of the tribe, including race, culture, kinship structure, religion, and economic philosophy. In short, Indian tribes have since time immemorial identified their members as all those who share an identifiable way of life unique to the tribe. This fact presents tribal governments with a more difficult problem than that faced by non-tribal governments. It is for the above reason that Indian tribes usually carefully list in membership provisions in their constitutions those requirements which they believe are basic and fundamental toward preserving the identity of the Tribe.

In summary, membership requirements of Indian tribes are generally considered by tribes to be so fundamentally important to the existence and identity of the tribe that the requirements are usually included in the tribal constitution, rather than left to be established by the tribal council by legislation.

A second consideration of course, is that membership in the Tribe also entitles a person to receive substantial benefits not available to non-members. For example, tribal members will have a right to share in tribal assets and to receive tribal benefits, as well as federal services provided to the Tribe such as education scholarships and health care and facilities. Tribal members also are entitled to the protection of federal laws designed to protect the unique rights of Indian tribes, such as the laws which permit the BIA to hold tribal and individual lands in trust and exempt those lands from taxation and other kinds of encumbrances.

A third consideration is that, in our opinion, the Menominee Tribe is not legally bound to accept the membership requirements established in the Menominee Restoration Act as the requirements which will be in effect after the Constitution is adopted. The roll prepared under the Menominee Restoration Act is essentially a tribal roll prepared by the Secretary of the Interior pursuant to Congressional requirements for two purposes: (1) to identify those

persons whom the Secretary will accept as having the right to vote on the tribal Constitution and on the first tribal council, and (2) to identify those persons eligible for federal services provided to the Menominee Tribe during the interim before adoption of the Constitution and establishment of a tribal roll thereunder.

As a background for the decisions to be made with regard to this article, the remainder of this section briefly reviews previous Menominee tribal membership requirements.

A. Requirements For Membership In the Menominee Tribe Prior To Termination.

1. Before 1934.

Before Congress enacted the Act of June 15, 1934, (to be discussed next), requirements for membership in the Menominee Tribe were apparently few and members were simply those people whom the Tribe recognized as members. Degree of blood was apparently not a factor, but birth on the reservation was required. This is the implication from a House Report in 1934 (on the then proposed Act of 1934 which purported to establish new Menominee tribal membership requirements):

Under present regulations the degree of Indian blood is not a factor in the determination of tribal rights, which depend upon birth into the tribe on the reservation, affiliation with the Indians and recognition by them as a member of the tribe. Hence, with certain exceptions, not important here, children born in a white community after the parents abandoned tribal relations would not be entitled to tribal membership and rights. [H. Rep. No. 1406, 73d Cong., 2d Sess. (April 30, 1934).]

2. The Act of June 15, 1934 (48 Stat. 965). (Included as part IV of this discussion on tribal membership.)

In 1934, apparently pursuant to a request of the Tribe, the United States Congress enacted the Act of June 15, 1934, which established the following requirements for future enrollment in the Tribe (see section 4 of that Act):

- a. The person must possess at least one-fourth degree Menominee blood.
- b. Both parents of the person must be residents on the reservation at the time of the person's birth.
- c. One of the person's parents must be an enrolled member of the Tribe.

- d. No person who participated in the so-called "Half-Breed Payment of 1849" (commonly referred to as "49ers") was eligible for enrollment.
- e. No descendants of "49ers" were eligible for enrollment.

All persons already enrolled as Menominees on the pre-1934 roll were automatically placed on the new 1934 roll. Thus, the roll previous to 1934 was used as the base roll. The Act also provided a right of appeal from a denial of a person's application to the federal district court. (See section 6 of the Act).

- 3. The Act of July 14, 1939 (53 Stat. 1003).  
(Included in Part IV)

By the Act of 1939, Congress amended the Act of 1934 (see above) to provide that persons would be enrolled "irrespective of the derivation of the Menominee blood." This meant that the degree of "49er blood was not to be considered in regard to whether a person was entitled to be considered for enrollment in the Tribe." Thus, of the above five enumerated requirements in the 1934 Act, after 1939, only the first three requirements were applicable for tribal enrollment. The Act of 1939 also required the Secretary to review the pre-1934 base roll to determine the tribal blood degree of all persons on that roll. The reason for this, as explained in the House Report, was to enable the Secretary to determine accurately the blood degree of descendants of persons on the base roll in light of the 1/4 degree requirement of the 1934 Act.

- 4. The Termination Act of 1954.

This Act provided that a final roll be established for the Tribe. June 17, 1954 was designated as the cut-off date for all potential enrollees, and any person born after that date was ineligible for enrollment in the Tribe. The membership roll prepared pursuant to the Termination Act apparently was based upon the requirements established by the Act of 1934 as amended by the Act of 1939.

#### B. The Roll Established Pursuant to the Menominee Restoration Act.

Under the Menominee Restoration Act, and the regulations published pursuant to that Act (25 C.F.R. §43k.1-43k.17) the Menominee membership roll will consist of person who satisfy the following requirements:

- 1. All these persons whose names appear on the Termination Act roll, or on any other official tribal roll; and

2. All other persons who satisfy the following requirements;

- a. They are descendants of a person or persons whose names appear on the above mentioned membership rolls; and
- b. They possess at least one-fourth degree Menominee Indian blood; and
- c. They have filed an application for enrollment with the Tribe in accordance with the procedures set forth in 25 C.F.R. §§43k.1 et seq.

As stated previously, the reasons for the establishment of the roll pursuant to the Menominee Restoration Act are (1) to identify those persons who will be considered to be tribal members for the purpose of voting on the adoption of a tribal constitution and in the first election of the tribal governing body, and (2) to identify those persons whom the Secretary of the Interior will treat as tribal members for purposes of being eligible for federal benefits applicable to the Tribe. You should note that the Menominee Restoration Act in setting forth requirements for tribal membership basically adopts all other membership rolls of the Tribe; thus, all persons on those rolls are automatically members of the Tribe even though there may have been different requirements for each roll. The act then establishes requirements for additions to the resulting roll.

## II. QUESTIONS

A. There Are Three Approaches To The Drafting Of This Constitutional Provision.

1. The Constitution could list no membership requirements, but instead simply direct the tribal council to establish the membership requirements by tribal ordinance, or
2. The Constitution could list all membership requirements leaving no power in the tribal council to add additional requirements, but authorizing the council to enforce the provision by tribal ordinance which would consist of establishing a procedure by which persons could apply

and be approved for tribal membership, or

3. The Constitution could list certain requirements which are considered to be basic and fundamental to tribal identity and permit the tribal council to add other requirements by tribal ordinance as well as to enforce the provision by appropriate legislation.

Which of the above three approaches should be adopted as far as the Menominee Constitution is concerned? If you agree that membership requirements are of basic and fundamental importance, it would be advisable to state them in the Constitution and to deny the tribal council the power to add requirements to those stated in the Constitution. The council could then be directed to establish a procedure by which new applications for membership are to be considered and approved or disapproved, and perhaps by which disapprovals may be appealed.

B. If You Decide That The Menominee Constitution Should List All Or Some Membership Requirements, Then The Following Questions Must Be Answered Before Such Provision Can Be Drafted.

1. Should there be a requirement of a certain degree of Menominee Indian blood? If so, what should that degree be? Note that since 1934, a person had to have at least one-quarter degree Menominee Indian blood to be eligible to be a member of the Tribe. Consider in conjunction with question the following question: Should the Tribe establish two or more classes of membership based upon blood degree which would result in members of each class being entitled to different tribal privileges. For example, 1/4 or more degree of tribal blood might entitle a person to share in any distribution of tribal assets, while persons with less than 1/4 degree tribal blood could not share in such a distribution, but would be treated as tribal members for all other purposes. This is illustrated in Example 8 in part III to follow.

If the Constitution does establish two or more classes of membership, what should be the distinguishing characteristics of each class in terms of requirements and entitlement to benefits?

Another kind of provision, establishing membership classes, which is illustrated



in Example 7 below, places a premium on a specified degree of tribal blood quantum insofar as membership eligibility is concerned. Note in Example 7 that persons who have one-quarter degree tribal blood must also have parents who resided on the reservation at the time of the person's birth in order to be a tribal member; but persons who are one-half or more degree blood are members regardless of where his or her parents resided at the time of the person's birth. Should the Menominee Constitution incorporate this kind of provision?

2. Should there be a requirement that one or both of a person's parents must have resided on the reservation at the time of the birth of the person?
3. Should there be a requirement that one or both of the parents of the person be on a Menominee roll? If so, should a particular roll or rolls be designated?
4. Should there be a requirement that the person be a resident of the reservation in order to be a member of the tribe?
5. Should there be a provision allowing for membership by adoption? If so, should members by adoption have less rights than members who meet the constitutional requirements for membership? What should be the requirements for becoming a member by adoption?
6. Should the constitution set up some of the mechanics of the procedure by which a person can become a member of the tribe? Or should the tribal council be directed to set up the procedure by legislation? In either case, it would be advisable to require in the Constitution that a person be on the official tribal roll, in order for the person to be entitled to membership rights. Thus, if a person meets the requirements, but has not had his membership application approved, that person would not be entitled to be treated as a member.

If the Constitution sets up the procedure, what should be included as details of the

procedure?

- a. Who should decide whether a person meets the constitutional qualifications for membership? Should the tribal council itself decide? Should a special enrollment committee decide? Who should appoint the committee? The tribal council? The Secretary of the Interior?
  - b. Should time periods be established within which a person's application must be acted upon?
  - c. Other details? If the Constitution does include certain details of procedure, it would nevertheless be advisable to authorize the tribal council to enact other procedural details where necessary.
7. Should the Constitution guarantee a person the right to appeal an adverse decision as to his application for membership? Should the appellate body be a special tribal committee? Should the tribal council be directed to set up this Committee? Or should the tribal courts have the duty of reviewing an appeal of an adverse decision on membership? Or should the Secretary of the Interior be the reviewer of appeals from adverse decisions on membership? When should a decision be considered to be final and conclusive with no further right of appeal?
8. Should there be certain disqualifications for tribal membership? For example, enrollment in another tribe is a common disqualification for tribal membership found in tribal enrollment provisions whether in constitutions or ordinances. Are there other kinds of disqualifications which should be included?
9. Should there be a provision which designates how a person can lose his tribal membership? For example, enrollment in another tribe could constitute cause for forfeiture of membership in the Menominee Tribe. Are there any other reasons which should result in automatic forfeiture of tribal membership?

10. Should the provision set up a process by which a person may surrender his tribal membership? Or should the provision simply empower the tribal council to establish a procedure by which a person may surrender a tribal membership?
11. Should one requirement for tribal membership be that a person be a United States citizen?
12. Should one or more previous Menominee membership rolls be adopted as a base roll and the requirements in the Constitutions made applicable only to additions to the base roll made pursuant to the requirements for membership as stated in the Constitution? A base roll is one which is automatically included as a part of the new roll. Thus, the persons on the base roll are automatically placed on the new roll. Usually any new requirements for membership are made applicable only to persons added to the base roll. An illustration of this is found in Section 1 of the Act of 1934; see part IV to follow. See also the examples in part III next; almost every one adopts a previous tribal roll as a base roll. If you decide to adopt a base roll, which previous roll or rolls should be established in the constitution as a base roll?

One major advantage to adopting a previous roll as a base roll is that the Tribe will be spared much time, effort and expense in preparing and sending out applications for membership, processing them, approving or disapproving them, and waiting for appeals to be concluded. Many tribal members will automatically be on the current tribal roll if they are on the base roll. Thus, only additions to the base roll must be processed and approved in light of the constitution requirements. If there is no base roll, then the Tribe must prepare an entirely new roll by processing and approving applications from all potential members of the Tribe. Information in previous rolls could be evidence of eligibility. Also, while the Tribe is preparing a tribal roll, tribal members may have difficulty in proving eligibility for tribal or federal benefits. In summary, there are definite advantages to adopting a previous membership roll as a base roll and then making any new membership requirements applicable to additions to that roll, as

opposed to developing an entirely new tribal membership roll.

There should be no problem with adopting a previous Menominess roll as a base roll if the membership provision of the Constitution either adopts the same requirements as the base roll or adopts new requirements which result in persons not eligible to be on the base roll becoming eligible to be on the new roll. For example, the Constitution membership requirements could be the same as the base roll except that the base roll requires one-eighth degree tribal blood. This means that all persons on the base roll more than satisfy one-eighth degree requirement, and thus all that need be done is to add to that base roll persons who have one-eighth degree tribal blood and satisfy all other requirements.

However, a problem will arise if a new membership requirement is established by the Constitution which could not be met by many persons on the membership roll chosen as a base roll. For example, suppose that the roll prepared pursuant to the Menominee Restoration Act were adopted as the base roll, but a new membership requirement was added which required a person to be a resident of the reservation in order to be a tribal member. Many persons on the reservation in order to be a tribal member. Many persons on the Restoration Act roll would not meet that requirement. If such a problem arises, it would be advisable not to adopt a previous roll as a base roll, but rather it would be advisable to prepare an entirely new roll. The reason is that there may be legal problems in removing persons from a tribal roll once that roll is adopted.

### III. EXAMPLES

#### MEMBERSHIP

##### Example 1

#### ARTICLE II - MEMBERSHIP

SECTION 1. For the purpose of membership in this Band under this Constitution, the following shall be included:

(a) All persons whose names appear on any official allotment rolls of the Bad River Reservation.

(b) All children born to any member of the Bad River Band who is a resident of the reservation at the time of the birth of said children.

SEC. 2. The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, governing future membership and the acquisition or loss of membership.

SEC. 3. The administration of the foregoing powers, and of all by-laws and ordinances affecting tribal membership, shall be vested in a Membership Committee, to be appointed by the Tribal Council independent of its own members. The acts of such committee shall be subject to review by the Tribal Council and the action of such Council shall be final, except as otherwise hereinafter provided.

SEC. 4. Adoption of a nonmember of the Band shall be made by written application to the Membership Committee who shall make recommendations to the Tribal Council. The decision of the Tribal Council shall be subject to popular vote at the next annual election.

SEC. 5. Property rights shall not be acquired or lost through membership in this organization, except as provided herein.

Document 1

##### Example 2

#### ARTICLE II - MEMBERSHIP

SECTION 1. The membership of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin shall consist of the following persons:

(a) All persons of Lac Courte Oreilles Chippewa Indian blood whose names appear on the official census roll of the Band as of January 1, 1940, provided such persons are citizens of the United States and are not enrolled with another tribe, band or group of Indians. This roll shall be the basic membership roll.

(b) Any lineal descendant of a member born prior to the effective date of this constitution, provided an application for enrollment is filed with the Governing Board within two years of the effective date of this constitution, and provided further, that such person is not enrolled with another tribe, band or group of Indians.

(c) Any person gaining membership after the effective date of this constitution through ordinances enacted under Section 2 of this Article.

SEC. 2. The Governing Board shall enact an ordinance within one year from date of approval of this constitution subject to approval of the Secretary of the Interior stating the criteria of future membership and adoption of new members. Such ordinances shall include the provision that only persons of 1/8 or more Lac Courte Oreilles Indian blood be granted membership.

SEC. 3. Any person who has been rejected for enrollment as a member of the Band shall have the right of appeal to the Secretary of the Interior, whose decision shall be final.

SEC. 4. The Governing Board shall have the power to enact ordinances governing loss of membership, such ordinance subject to the approval of the Secretary of the Interior. The ordinance shall include a provision for appeal of decisions to the Secretary of the Interior.

Document 2

### Example 3

## ARTICLE II - MEMBERSHIP

SECTION 1. The membership of the Shakopee Mdewakanton Sioux Community shall consist of:

- (a) All persons of Mdewakanton Sioux Indian blood, not members of any other Indian tribe, band or group, whose names appear on the 1969 census roll of Mdewakanton Sioux residents of the Prior Lake Reservation, Minnesota, prepared specifically for the purpose of organizing the Shakopee Mdewakanton Sioux Community and approved by the Secretary of the Interior.

- (b) All children of at least one-fourth (1/4) degree Mdewakanton Sioux Indian blood born to an enrolled member of the Shakopee Mdewakanton Sioux Community.
- (c) All descendants of at least one-fourth (1/4) degree Mdewakanton Sioux Indian blood who can trace their Mdewakanton Sioux Indian blood to the Mdewakanton Sioux Indians who resided in Minnesota on May 20, 1886, Provided, they apply for membership and are found qualified by the governing body, and provided further, they are not enrolled as members of some other tribe or band of Indians.

SEC. 2. The governing body shall have power to pass resolutions or ordinances, subject to the approval of the Secretary of the Interior, governing future membership, adoptions and loss of membership.

Document 14

#### Example 4

### ARTICLE II - MEMBERSHIP

SECTION 1. The membership of the Minnesota Chippewa Tribe shall consist of the following:

(a) Basic Membership Roll. All persons of Minnesota Chippewa Indian blood whose names appear on the annuity roll of April 14, 1941, prepared pursuant to the Treaty with said Indians as enacted by Congress in the Act of January 14, 1889 (25 Stat. 642) and Acts amendatory thereof, and as corrected by the Tribal Executive Committee and ratified by the Tribal Delegates, which roll shall be known as the basic membership roll of the Tribe.

(b) All children of Minnesota Chippewa Indian blood born between April 14, 1941, the date of the annuity roll, and July 3, 1961, the date of approval of the membership ordinance by the Area Director, to a parent or parents, either or both of whose names appear on the basic membership roll, provided an application for enrollment was filed with the Secretary of the Tribal Delegates by July 4, 1962, one year after the date of approval of the ordinance by the Area Director.

(c) All children of at least one quarter (1/4) degree Minnesota Chippewa Indian blood born after July 3, 1961, to a member, provided that an application for enrollment was or is filed with the Secretary of the Tribal Delegates or the Tribal

Executive Committee within one year after the date of birth of such children.

SEC. 2. No person born after July 3, 1961, shall be eligible for enrollment if enrolled as a member of another tribe, or is not an American citizen.

SEC. 3. Any person of Minnesota Chippewa Indian blood who meets the membership requirements of the Tribe, but who because of an error has not been enrolled, may be admitted to membership in the Minnesota Chippewa Tribe by adoption, if such adoption is approved by the Tribal Executive Committee, and shall have full membership privileges from the date the adoption is approved.

SEC. 4. Any person who has been rejected for enrollment as a member of the Minnesota Chippewa Tribe shall have the right of appeal within sixty days from the date of written notice of rejection to the Secretary of the Interior from the decision of the Tribal Executive Committee and the decision of the Secretary of the Interior shall be final.

SEC. 5. Nothing contained in this article shall be construed to deprive any descendant of a Minnesota Chippewa Indian of the right to participate in any benefits derived from claims against the U.S. Government when awards are made for an on behalf and for the benefit of descendants of members of said Tribe.

Document 15

#### Example 5

### ARTICLE III - MEMBERSHIP

SECTION 1. All persons of Indian blood whose names appear on the census roll of April 1, 1934, of the Crandon Sub-Agency and who were at the time of that roll residing or entitled to reside on land bought in Michigan under the Act of June 30, 1913, and all their descendants who are so residing or entitled to reside at the time of the adoption of this Constitution are members of this Community. Within 2 years after the adoption of this Constitution the governing body of the Community may correct the above-mentioned census roll, if necessary, with the approval of the Secretary of the Interior.

SEC. 2. (a) Every child born to any member of the Community provided such member as a resident of the reservation at the time of birth of said child shall be a member of this Community.

(b) Every child both of whose parents are members of the Community shall be a member of this Community.



(c) Every child of one-half or more Indian blood to any nonresident member of the Community shall be a member of this Community.

SEC. 3. The members of this Community may by a majority vote adopt as a member of the Community any person of Indian blood related by marriage or descent to the members of the Community who will assist the Community in the fulfillment of its purposes and also any other person whose adoption is approved by the Secretary of the Interior.

Document 17.

#### Example 6

### ARTICLE II - MEMBERSHIP

SECTION 1. Membership of the Rosebud Sioux Tribe shall consist as follows:

(a) All persons of Indian blood, including persons born since December 31, 1920, whose names appear on the official census roll of the tribe as of April 1, 1935.

(b) All persons born after April 1, 1935, and prior to the effective date of this amendment, to any member of the Rosebud Sioux Tribe who was a resident of the reservation at the time of the birth of said persons. [Amendment No. V, effective May 2, 1966.]

(c) All children of one-fourth or more Rosebud Sioux Indian blood born after the effective date of this amendment to a member of the tribe, regardless of the residence of the parent. [Amendment No. V, effective May 2, 1966.]

SEC. 2. The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership and the adoption of new members.

Document 20.

#### Example 7

### ARTICLE II - MEMBERSHIP

SECTION 1. All persons of Indian blood whose names appear on the official census roll of the Lac du Flambeau Reservation as

of January 1, 1936, shall be members of the Tribe, provided, that the Tribal Council shall have power to revise said roll, with the approval of the Secretary of the Interior, at any time within amended seventeen years from the approval of this Constitution.

SEC. 2. (a) Any child, one-fourth (1/4) or more Indian blood born to any member of the Tribe who at the birth of such child resided on the reservation shall be entitled of this Constitution.

(b) Any child of one-half (1/2) or more Indian blood born to any member shall be entitled to membership regardless of his parents' residence.

(c) Any person of Indian blood who is a descendant of any member may be admitted to membership by a majority vote of the Tribal Council.

(d) Any person of Indian blood married to a member may be admitted to membership by a three-fourth (3/4) vote of the Tribal Council.

(e) Any person adopted into membership must be a permanent resident of the reservation and not a member of any other Indian tribe.

(f) Applications for membership shall be submitted by the applicant or his parent or guardian to a Committee on Membership, which shall pass upon them and present them to the Tribal Council for final action.

SEC. 3. Vested property rights shall not be acquired or lost through membership in this organization except as provided herein.

Document 3

#### Example 8

### ARTICLE II - MEMBERSHIP

SECTION 1. Tribal members having the right to share in any per capita distribution of Tribal monies shall be: Those persons of Blackfeet Indian blood whose names appear on the official membership roll of the Blackfeet Tribe; and all persons having one-fourth (1/4) degree or more of Blackfeet Indian blood born to any blood member of the Blackfeet Indian Tribe after that date.

SECTION 2. Persons of less than one-fourth (1/4) degree of Blackfeet Indian blood born to any member of the Blackfeet Tribe, shall be Tribal members and shall have all the rights of members except the right to per capita distribution of Tribal monies.

SECTION 3. Separate rolls shall be kept of both classes of membership.

SECTION 4. The Big Council shall make laws regulating membership according to this article, subject to review by the Blackfeet Judicial System.

-OR-

(Choice 2 - left as is)

SECTION 1. Members of the Blackfeet Tribe shall consist of all persons of Blackfeet Indian blood whose names appear on the official membership roll of the Blackfeet Tribe. All children having one-fourth (1/4) degree of Blackfeet Indian blood or more shall be eligible for enrollment in the Blackfeet Tribe.

SECTION 2. The Big Council shall make laws regulating membership according to this article, subject to review by the Blackfeet Tribal Court.

## BUSINESS MANAGEMENT OF TRIBAL ASSETS

### I. CONSIDERATIONS

#### A. What Are Tribal Assets?

After approval by Congress of the Menominee Transfer Plan, all real property of MEI was transferred to the United States in trust for the Menominee Tribe. See, narrative part of Transfer Plan at p.A-39. In addition, all personal property of MEI was transferred to the Tribe. See, narrative at p.A-39. A tribal business, Menominee Enterprises, was established by the Menominee Restoration Committee and delegated the power and authority to manage and operate the real and personal property transferred to the Tribe. See, Management Plan of Menominee Enterprises, a part of the Transfer Plan.

Present tribal assets thus include (1) all real and personal property formerly owned by MEI; (2) the tribal business, i.e., Menominee Enterprises (see especially section 13 of the Management Plan of Menominee Enterprises at pp.28-29); and (3) any profits which may be distributed to the Tribe for its use in accordance with the provisions of the Management Plan for Menominee Enterprises. See, Management Plan for Menominee Enterprises, section 10b, pp.25-26.

#### B. The Present Arrangement For The Management Of Tribal Assets.

The Plan for transfer of all of the assets of Menominee Enterprises, Inc., a Wisconsin Corporation, pursuant to sections 6(a) and 6(b) of the Menominee Restoration Act (hereafter referred to as the "Transfer Plan") was approved by Congress in March of 1975. The Transfer Plan included among other documents, the "Trust and Management Agreement between the Menominee Indian Tribe of Wisconsin and the Secretary of the Interior of the United States" (hereafter referred to as the "Agreement"), and the "Management Plan of Menominee Enterprises, a Tribal Enterprise of the Menominee Indian Tribe of Wisconsin" (hereafter referred to as the "Plan"). The Agreement and the Plan together established the present arrangement for the management of the tribal assets. This arrangement, with its main features, is diagramed for your reference and attached as Attachment A at the end of this discussion on this article.

The present arrangement for the management of tribal assets is scheduled to continue until six (6) months after the tribal council takes office. This is because the Agreement and the Plan are each scheduled to expire six (6) months after the tribal council takes office. However, the tribal council, under both the Agreement and the Plan, is given the right to reaffirm both of those documents. If both are reaffirmed, the Agreement and the Plan will continue in

effect and, consequently, the present arrangement for the management of tribal assets will continue in effect.

The two basic questions for you to consider in contemplating the substance of this article are first, do you think that the management of tribal assets is so important that the constitution should establish basic checks and guidelines for the exercise of the tribal council's power to manage tribal assets? Second, if you think there should be such constitutional checks and guidelines on the tribal council's power to manage, then you should consider this question: In reviewing the basic principles of the Agreement and the Plan which underlie the present arrangement for the management of tribal assets, do you think these principles provide sufficient checks and guidelines and, therefore, should be incorporated into this constitutional article?

In summary, in considering the substance of this article, you should consider this question: Do you think the present arrangement for the management of tribal assets, established by the Agreement and the Plan, should be incorporated into this constitutional article?

If you decide to adopt the present management arrangement into the constitution, this article will incorporate the basic principles underlying the arrangement. The article could also impose a duty on the tribal council to implement those principles by entering into an agreement with the United States to define specifically its role in the management, and by establishing the principle business area of the Tribe by written plan or charter. In light of such duties, the tribal council should find it logical to reaffirm the present Agreement and Plan.

The next sections of this discussion will set forth the basic principles of the Agreement and Plan for your consideration.

C. Basic Principles In The Trust And Management Agreement Which Could Be Incorporated Into The Constitution.

The Trust and Management Agreement (hereafter referred to as the "Agreement") was entered into by the Menominee Restoration Committee (hereafter referred to as "MRC") on behalf of the Tribe and the Secretary of the Interior on behalf of the United States. The Agreement essentially accomplishes two general purposes: (1) It limits and defines the scope of the management power and authority of the MRC (and the tribal council), and (2) it limits and defines the scope of the power and responsibility of the Secretary to supervise the management decisions of the MRC (and the tribal council).

Generally, the Agreement impliedly acknowledges that the Tribe has the inherent general power to manage, operate and control tribal assets. Accordingly, the Tribe has the power to create a tribal business (or businesses) to manage the assets on behalf of the Tribe. (See Agreement, section 8, p.5). The article of the

constitution which authorizes the tribal council to exercise all powers of the Tribe except as limited by the constitution, will operate to grant these powers to the tribal council.

The following are basic principles established in the Agreement which in effect limit and define the power of the MRC (and the tribal council once it takes office) to manage the tribal assets. If these principles are adopted into the tribal constitution, it would be reasonable and logical for the tribal council to reaffirm the Agreement.

1. Basic Management Policy.

Maximum self-determination of the Menominee people, that is, the assurance of federal protection, not federal domination, is acknowledged to be the policy behind the provisions of the Agreement. (See section 4, p.3). This statement, in effect, establishes the general policy to be followed in determining specifically what scope of involvement is and should be demanded of the United States in the management of the tribal assets. Such a policy could be incorporated into the constitution as a guideline for the tribal council in negotiating future agreements (or reaffirming the present one, with United States concerning the management of tribal assets.

2. Management of Tribal Forest Land.

The tribal forest land must be managed on a sustained yield basis according to a written plan. The tribal council can adopt or revise the plan, but the Secretary has the right to approve any new plan or revision. (See Agreement, section 6, p.4).

3. Alienation or Encumbrance of Tribal Land.  
(See Agreement, section 7, p.5).

- a. Tribal land may be exchanged for land of equal value or right-of-ways may be granted over tribal land, but only with the consent of the Secretary and with the approval of the Tribe, given pursuant to the tribal constitution and bylaws.
- b. No other tribal land or interests therein may be sold; mortgaged (an exception is that lands acquired by the Tribe in the future may be mortgaged); or otherwise transferred, without the consent of the Tribe, given pursuant to the terms of the tribal constitution and bylaws, of the Secretary and of both Houses of the United States Congress. [This limitation on the Tribal Council's power over tribal

lands could be inserted as the first section of a general article on control of tribal lands or it could be an article in itself, or it could be a provision in the article defining the general powers of the Tribal Council.]

- c. The MRC may lease or otherwise encumber tribal land for the use of non-tribal members, but not for longer than 25 years; however, options to renew are permitted for not more than 25 years. This authority is not made subject to the consent of the Tribe, although certainly such a requirement could be included in the constitution, or the Congress, as above, but it is made subject to the consent of the Secretary pursuant to regulations. [This aspect of the Tribal Council's control of tribal land is discussed in Tab 14 of this Handbook entitled Use of Tribal Lands By Tribal Members and Non-Members.]
- d. Tribal lands may be made available to tribal members for residential, agricultural, or commercial purposes under such terms and conditions as are set forth in the tribal constitution and bylaws. This authority is thus subject to limitations in the constitution and also it is subject to the consent of the Secretary pursuant to regulations. It is not subject to the consent of Congress. [This aspect of the Tribal Council's control of tribal land is discussed in Tab 14 of this Handbook entitled Use of Tribal Lands By Tribal Members and Non-Members.]
- e. It is acknowledged that the Tribe is not precluded from taxing tribal assets or other assets physically within the Tribe's jurisdiction. (See Agreement, section 10, p.6).

D. Basic Principles In the Trust and Management Agreement Which Are Not Proper Subjects of the Constitution But Which Argue In Favor of A Reaffirmation of the Trust and Management Agreement.

The tribal constitution is a document by means of which the tribal members authorize the governing body to exercise tribal powers and impose various limitations on the exercise of those powers. The

tribal constitution, once adopted, is binding on the tribal members and the tribal council, but not on the federal government which is a separate sovereign created under a separate constitution. Traditionally, tribes and the United States have dealt with each other by way of agreement. Thus, in the Trust and Management Agreement, the Tribe and the United States agreed that each would abide by certain principles in the management of the tribal assets, the authority of the United States over the assets being derived from its trust responsibility.

The tribal constitution can apply means of these same principle to the tribal council's power to manage the tribal assets, thus, continuing to bind the Tribe and the tribal council to the principles even though the Agreement may expire. But the tribal constitution has no binding authority over the United States as to the principles of the Agreement. If the Tribe wishes the United States to be bound by the principles in the Agreement, the Tribe must reaffirm the Agreement or enter into a new agreement encompassing the principles it wishes the Secretary to abide by. This constitutional article could impose a duty upon the tribal council to enter into an agreement with the Secretary setting forth the basic principles of that agreement.

The following are the basic principles of the Agreement which define and limit the scope of the supervisory powers of the Secretary, and which argue in favor of a reaffirmation of the Agreement, and also in favor of imposing a constitutional duty in the tribal council to establish by agreement with the Secretary these same basic principles.

1. The Secretary of the Interior agrees that he has only those powers and responsibilities over the tribal assets and the management of the tribal assets as are specifically set forth in the Agreement and those which are commensurate with his duty as trustee to see that the tribal assets are not wasted. (See Agreement, sections 8 and 9, pp.5-6, and narrative, p.23). He thus also agrees that the general power to manage, operate and control tribal assets is vested in the Tribe and its governing body and in such businesses as the governing body may create and delegate the power to manage the tribal assets. (See Agreement, section 8, p.5).

2. The Secretary agrees to assume the duty of providing business advice and assistance to the Tribe, on request of the Tribe. (See Agreement, section 9, p.6).

3. The Secretary acknowledges the Tribe's right to tax all assets within its jurisdiction, including tribal assets held in trust. (See Agreement, section 10, p.6).

4. The United States agrees to indemnify affected parties, including the Tribe and, its officers, from any court awarded damages that might result from the land transfer. (See Agreement, section 11, p.6).



E. Basic Principles In the Management Plan of Menominee Enterprises Which Could Be Incorporated Into the Constitution.

Pursuant to its authority to manage, operate and control the tribal assets on behalf of the Tribe, the MRC established a tribal business, Menominee Enterprise (hereafter referred to as "ME") which is authorized to act on behalf of the Tribe, in managing and operating the tribal mill, the tribal forest land, the enterprise personal property, and such additional assets as are obtained by ME.

The document which created ME is entitled "Management Plan of Menominee Enterprises, a tribal enterprise of the Menominee Indian Tribe of Wisconsin" (hereafter referred to as the "Plan"). The Plan sets forth the powers, obligations, and responsibilities of the tribal business. (See Plan, section 2, p.2).

Like the Trust and Management Agreement, the Plan will remain effective for six months after the date on which the tribal council takes office. However, the tribal council is granted the unilateral right to reaffirm the Plan, by duly adopted resolution, on behalf of the Tribe. If the tribal council reaffirms the Plan, it will remain effective and the tribal council will be substituted for the MRC insofar as the Plan is concerned. (See Plan, section 14d p.29).

This constitutional article could impose a duty upon the tribal council to establish by written plan the principle business arm of the Tribe based upon stated principles as set forth in the article. The following are basic principles established in the Plan which could be adopted into this article of the tribal constitution. If the principles were adopted into the tribal constitution, it would be reasonable and logical for the tribal council to reaffirm the Plan since it is based on those principles.

1. The Scope of ME's Authority Over the Tribal Property It Manages and Operates.
  - a. The Plan establishes ME as the principle business arm of the Tribe vested with all powers necessary to manage and operate the subject property in order to properly conduct the Tribe's business operations. (See Plan, section 4, p.4). The subject property, i.e., the property subject to ME management, includes the tribal mill, the tribal forest land, the enterprise personal property, and such additional assets as are obtained by the tribal enterprise. (See Plan, section 1k, p.2).
  - b. Although not expressly stated in the Plan, one basic principle fairly inferred from the Plan is that the MRC (or the tribal

council) has no authority over the implementation of the Plan, i.e., the operation of ME, except as is specifically set forth in the Plan. (See especially sections 2, 3, 4, 5, 6, 12, and 13). Thus, the intention of the Plan is to retain ultimate control over the tribal business in the governing body of the Tribe by retaining in it the power to terminate the Plan as well as other key powers, also to provide sufficient safeguards such that the daily operation of the tribal business is insulated from political pressures which inherently motivate the governing body of the Tribe. The tribal business can then make decisions based on good business sense rather than on good political sense. Experience shows that the two senses do not necessarily lead to the same decision.

- c. ME has no interest in any tribal real property, except the right to manage the property as set forth in the Plan. No tribal real property can be an asset of ME for any purpose. (See Plan, section 8c, p.23).
- d. No tribal property other than the specific property expressly made subject to ME management is subject to the powers of ME. (See Plan, section 3, p.3).
- e. The Tribe retains its right and power to exercise all proper governmental and sovereign functions over the property managed by ME. (See Plan, section 3, p.3).
- f. The provisions of the Plan are subject to all the provisions of the Trust and Management Agreement and of the tribal constitution. Thus, if the Plan provisions conflict with the provisions of either the Agreement or the constitution, the conflicting provisions in the Plan are void. (See Plan, section 3, pp.3-4).
- g. ME is authorized "to pledge, mortgage, and otherwise encumber ... assets of the tribe under such terms and conditions as are set forth in the tribal constitution and by-laws." (See section 4k, p.5) You will recall in this regard that section 7 of the Trust and Management Agreement, p.5, provides that tribal land or interests therein may not be sold, mortgaged, alienated; or otherwise transferred without

the consent of the Tribe, given pursuant to the terms of the tribal constitution and bylaws, the Secretary, and Congress.

ME's authorization also appears to include the power to lease tribal lands for business related purposes. Insofar as leases or other encumbrances involving non-Indians is concerned, section 7 of the Agreement states that those may not be granted for longer than 25 years, with a 25 year option to renew, and the Secretary must approve the arrangement.

Moreover, ME's authorization is broad enough to include the power to authorize tribal members to use tribal forest lands and other tribal lands subject to its authority, as well ME's own lands, for business related purposes. However, section 7 of the Agreement states that the constitution shall set forth the terms and conditions of such use. ME has no power to authorize tribal members or non-tribal members to use tribal non-forest lands; MRC or the tribal council, would have that authority subject to the terms and conditions in the tribal constitution.

- h. The Plan authorizes ME to acquire and own real property in its own name and not the Tribe's. (See Plan, section 4l, p.6; and section 8, p.23). As to this real property acquired by ME, the Tribe has waived certain federal protections afforded other tribal real property. See section 4j, p.5; and section 1l, p.26. The reason for such specific waives of immunity is to enable ME easily to pledge its real property as security for loans, for contract performance, and for other business ventures. You will recall that it is extremely difficult for ME to sell, mortgage, or otherwise transfer tribal real property or interests in tribal real property because of section 7 of the Agreement which requires the consent of the Tribe, the Secretary and the Congress. This topic is discussed in more detail in part        below. ME has the power to sell its own lands if "reasonably necessary (i) to implement the powers enumerated [in section 4a-s, pp.5-6] or (ii) to further the business needs of the Tribe." (See Plan, section 4t, p.6).
- i. ME must manage all forest land on a sustained yield basis according to the Forest Management

Plan: Menominee Enterprises, Inc., 1968-1982 (1973 Revision) and according to section 6 of the Trust and Management Agreement. (See Plan, section 9, p.24).

2. The Tribe Waives As To ME Its Sovereign Immunity From Suit and the Tribe Authorizes ME To Pledge Any Real Property Which ME Acquires In Its Own Name As Security For Its Performance of Agreements.

For the purpose of enabling ME to enter into business agreements with other parties either to secure loans or to provide services or products, it is necessary (1) that ME be able to pledge assets as security for debts, and (2) that the other parties be assured that they can enforce ME's pledge of assets, or enforce ME's pledge to provide services or products in a court of law.

The Tribe, its officers and its assets, including real property are, under federal law, immune from suit because of the Tribe's status as a sovereign government. In addition, the tribal governing body and ME, under section 4k, p.5 of the Plan, are not able to pledge the Tribe's real property without the consent of the tribal members, obtained in accordance with the tribal constitution, and the consent of the Secretary and Congress as well. (See section 7 of the Trust and Management Agreement.) Thus, ME as an arm of the tribal government is subject to the same immunities and limitations as the Tribe and the tribal governing body, unless specifically excepted by the Tribe and in accordance with the Trust and Management Agreement.

Therefore, to enable ME to enter into business agreements with other parties as discussed above, the Plan provides the following exemptions for ME from tribal immunity and limitations on tribal power to pledge and transfer interests in real property:

- a. The Tribe consents to allowing ME, by specific written agreement with any party, to sue and be sued in its capacity as a tribal enterprise, upon any contract, claim, or obligation arising out of its authorized activities; and the Tribe further authorizes ME to agree, by specific written agreement, to waive any immunity from suit it might otherwise have. (See Plan, section 11, p.26).

- b. Under section 11, p.26, ME is authorized to pledge, mortgage or otherwise encumber its own assets including real property, acquired under authority of section 4l, p.6, as security for debts. Of course, ME's assets do not include tribal forest land or any other tribal land

Finally, the Plan expressly states that, except as specifically provided above, (1) the Plan does not operate as a partial or total waiver of the Tribe's sovereign immunity, (2) it does not waive or limit the sovereign and governmental powers of the Tribe over ME, and (3) it does not waive the exemption and immunities from taxation to which ME is entitled, and to which the

Tribe, its members and its business are entitled by law. (See Plan, section 11, p.27, and the Trust and Management Agreement, section 10; see also Plan, section 3, p.3).

3. Authority and Rights of the Tribal Governing Body, of the Board of Directors of ME, and of Tribal Members.
  - a. Authority and rights of the tribal governing body.
    - (1) Authority to formulate the plan for the operation of the principle business arm of the Tribe. That is, to determine the rights and powers of the board of directors and of the tribal members. (See section 3 of Trust and Management Agreement, and section 2 of the Plan).
    - (2) Authority to recall members of the board of directors by affirmative vote of 6 members of MRC. (See Plan, section 5m(2), p.15).
    - (3) Authority to represent the Tribe in consulting with the ME board in its annual determination of what share of ME's excess profits should be retained by ME and what share should be paid to the Tribe. (See Plan, section 10b(3), pp.25-26). And the corresponding right to receive the tribal share on behalf of the Tribe and to determine whether the tribal share shall be utilized for tribal operations, distributed to tribal members, or divided and used for both purposes." (See Plan, section 10b(4), p.26).
    - (4) Authority to amend or repeal any action of the board of directors (taken pursuant to section 12(a) of the Plan) to amend sections 5, 6, 7, or 14(a); but a 2/3 vote of the MRC is required. (See Plan, section 12a, p.27). And the authority to make amendments to any provisions of the Plan by a 2/3 vote. (See Plan, section 12b, p.28).
    - (5) Unilateral authority to terminate the Plan by at least 2/3 vote of the MRC. If the Plan is thus properly terminated, the MRC (or the tribal council) has the right to assume control over all assets

and liabilities of ME from the board of directors and to have all books and records of ME delivered to the MRC (or tribal council). (See Plan, section 13, pp.28-29).

b. Authority and rights of the Board of Directors.

- (1) Authority to vote themselves a reasonable compensation for services. (See Plan, section 5h, p.11).
- (2) Authority to be subject to recall only on grounds of dishonesty, incompetence, nonparticipation in board matters, or other conduct seriously determined to the interests of the Tribe or of the tribal enterprise. (See Plan, section 5m, p.14).
- (3) If recall proceedings are instituted by tribal governing body, the right to be adequately notified of charges and hearing-meeting and to be heard at the hearing-meeting. (See Plan, section 5m(2), p.15).
- (4) Authority to elect and remove officers from among members of the board, and to fill vacancies in office. (See Plan, section 7, pp.18-19).
- (5) Authority to fill vacancies in board of directors membership by appointment until the next election. (See Plan, section 5b, p.7).
- (6) Authority to determine, in accordance with formula established in section 10b(1) and (2), p.25 of the Plan, the amount of excess ME profits to be retained by ME ("retained share"), and the amount to be paid over to the tribal governing body ("tribal share").
- (7) Authority to amend only sections 5, 6, 7, and 14(a) of the Plan, but the amendments cannot be inconsistent with other sections of the Plan. (See section 12a, p.27). And the right to be overturned in such action only by a vote of 6 of the 9 members of the MRC, i.e., a 2/3 vote. Section 5 concerns the internal rules and regulations of the

board of directors, and significantly, includes the procedure by which members of the board may be recalled. Section 6 concerns business meetings and voting at such meetings. Section 7 concerns the officers of the board of directors. And section 14(a) concerns the location of ME's principal place of business.

- (8) Right to be notified of any proposed action of the MRC (or tribal council) to terminate the Plan, such notice to be given in the notice of the meeting at which it will be considered. And the right to "be given a full opportunity to be heard at the meeting at which the action is proposed." (See Plan, section 13, p.28).

c. Rights of the tribal members.

- (1) All directors of ME must be tribal members. (See Plan, section 5b, p.8).
- (2) Right to recall members of the board of directors of ME in accordance with procedures set forth in section 5m(1), p.5 of the Plan.
- (3) Right to have an annual business meeting of tribal members held to receive report on business operations to elect directors, and to transact other business. (See Plan, section 6a, p.16).
- (4) Right to petition for a special business meeting. (See section 6b, p.16).
- (5) Right to be notified in writing by mail of meetings. (See section 6d, p.12).
- (6) If eligible voter of tribe, right to vote for board of directors and other matters submitted to vote at regular and special business meetings. Write-in voting and absentee voting is permitted, but not voting by proxy, or cumulative voting. (See section 6e, p.18).
- (7) Right to have 125 eligible tribal voters at business meetings before business can be conducted. (See section 6f, p.18).

C. Do you think this article should impose a duty on the tribal council to establish by a written plan the principle business arm of the Tribe to manage the tribal assets?

D. Are there any principles you think should be modified?

E. Are there any principles you think are omitted and should be included?

F. If you decide to adopt, without significant change, the present management arrangement, it will be necessary to decide specific questions called for by various provisions of the Agreement and Plan as follows:

1. Section 4k, pp.5-6 of the Plan calls for the constitution to establish the terms and conditions under which ME can pledge, mortgage, and otherwise encumber tribal assets. What should these "terms and conditions be?
2. Section 7, p.5, of the Agreement calls for the constitution to establish the manner in which tribal consent can be obtained for the sale, mortgage, alienation or other transfer of tribal land or interests in land. What should be the procedure for obtaining "tribal consent" to alienate or mortgage land?
3. Section 14, pp.7-8, of the Agreement, calls for the constitution to establish the manner in which the Trust and Management Agreement may be amended (it must be written). What should be the procedure for obtaining the agreement of the Tribe to amend the Trust and Management Agreement?



- (8) Right to have candidates for board named in a nominating petition signed by at least 75 eligible tribal voters and filed 20 days before the election. (See section 5b, p.8).
- (9) Right to have the ME's profits determined for each fiscal year in accordance with the formula established in section 10b(1) and (2) of the Plan, in order to ascertain "excess profits" which are subject to an equitable division between the Tribe, i.e., "tribal share", and ME, i.e., "retained share." (See section 10b(3), p.25). And the related right to participate in any distribution to tribal members of the tribal share of ME profits, if the tribal governing body decides to distribute all or part of the tribal share to members. The tribal governing body in deciding how to distribute the tribal share must "use its best judgment and shall carefully consider both the need for effective tribal operations and the individual financial needs of tribal members." (See section 10b(4), p.26).

#### 4. Involvement Of The United States.

The United States government has no authority in regard to the operation of the Plan, except as specifically provided in the Trust and Management Agreement. Section 9 of the Trust and Management Agreement in which the Secretary assumes the duty to provide expert business assistance to the Tribe on its request is specifically applied to ME. The Secretary will fulfill this duty in a manner consistent with his trust responsibility to the Tribe and its members. (See section 14e, p.30).

## II. QUESTIONS

A. Which of the aforementioned basic principles established in the Trust and Management Agreement and in the Management Plan of MEI do you think should be included in the Constitution, or to phrase it another way, do you think the present arrangement for the management of tribal assets, as established by the Trust and Management Agreement and by the Management Plan of Me, should be adopted into the Constitution?

B. Do you think this article should impose a duty on the tribal council to enter into an agreement with the United States establishing in specific terms the role of the United States in the management of the tribal assets?

### III. EXAMPLES

#### LAND

##### Example 1

#### ARTICLE VII - LAND

All lands of the Kaibab Reservation and all lands which may hereafter be acquired by the Kaibab Band of Paiute Indians or by the United States in trust for the Kaibab Band of Paiute Indians, shall be held as tribal land and no part of such land shall be mortgaged or sold. Tribal land shall not be allotted to individual Indians, but may be assigned to members of the Tribe, or leased, or otherwise used by the Band in accordance with such ordinances and resolutions as may be adopted by the Tribal Council.

Document 30

##### Example 2

#### ARTICLE VII - LAND ASSIGNMENT AND LAND LEASING

SECTION 1. Obtaining Use of Land. When any qualified member of the Pueblo of Laguna desires a piece of unoccupied Pueblo land, he shall select his land and make his application to the mayordomo of the village, who shall take the matter up with the village officer who in turn shall discuss the matter with the Council. If the application is approved by the Council the officer and the mayordomo shall stake out the boundaries for the applicant and shall give him a written assignment describing the land and stating the terms or conditions on which it is assigned. A copy of such assignment shall be retained for the Pueblo records. Assignments may be made conditional on the assignee's making certain improvements within a stated period or on other conditions. The assignee shall then have three years within which to improve and make use of his assignment. Upon failure to improve or make use of the assignment within the three-year period following the approval thereof, or upon failure to make use of the assignment for any period of three successive years, the Council may dispossess the applicant. The Council may otherwise dispossess the applicant in accordance with, or for, violation of this Constitution or the laws of the Pueblo, or for violation of conditions. If at any time an assignment has been abandoned, it may be cancelled by the Council. The Council shall have the duty to provide a system for the recording of all land assignments, and shall have power to regulate the granting of such assignments.

SECTION 2. Qualifications. The Council shall be the sole judge of the qualifications of any member to receive the use of any Pueblo lands, and to continue in possession of such lands.

SECTION 3. Acreage Limitations. No member shall be entitled to hold an assignment or assignments of the Pueblo lands in excess of an acreage limitation fixed by the Council.

SECTION 4. Eminent Domain. When in the public interest, and upon payment of just compensation for the improvements placed thereon, the Council shall have the authority to dispossess any member from his assignment, or a portion thereof. In the event of disagreement between the member and the Council as to the value of the improvements, the matter shall be decided finally by the Pueblo Court.

SECTION 5. Full Possession. The right of full possession shall be guaranteed to any member of the Pueblo holding lands the use of which has been assigned to him by the officers for cultivation or other purpose. The Council shall have power to regulate, limit or prohibit the transfer, during lifetime or on death, and the renting or leasing of assigned lands. No member holding said lands shall rent or lease same to any person not a member of the Pueblo without first getting authority from the Council. In no event shall any member be authorized to lease or rent the use of his land to a person not a member of the Pueblo if any member of the Pueblo needs such land. The Council shall be the judge of whether any member of the Pueblo needs such land. No assignments shall be cancelled or terminated except under provisions of Section 4 of this Article or for cause and upon payment of just compensation of any improvements made on the land.

SECTION 6. Non-Indians. Non-Indians shall not be entitled to receive any Pueblo benefits and shall not be permitted to hold assignments of land or the use thereof, except as provided in Section 7 of this Article and except that the surviving non-Indian spouse of a member may continue to live on the land assigned to the member under terms and conditions prescribed by the Council.

SECTION 7. Leases. No lease of land shall be given to any company, or corporation or to any non-member of the Laguna Pueblo who wishes to do business of any nature except by the decisions of the Pueblo Council assembled for the purpose. Then the Council shall have the power to execute such lease, and there must be a written agreement signed by the Governor, two members of the Council and the lessee; otherwise, such lease shall be null and void.

SECTION 8. Minerals. All minerals, in, on or under any lands under the jurisdiction of the Pueblo are and shall continue to remain the property of the Pueblo of Laguna and not of the person having the right to use or hold the surface of the land in, on or under which such minerals may exist or be found. The Council shall have the power to authorize removal of any such minerals with the approval of the Secretary of the Interior so long as his approval is required by law. All proceeds derived from the removal of any minerals shall be placed in the general Pueblo treasury to be expended as authorized by this revised Constitution. Any

mining lease shall provide that the lessee shall compensate the Pueblo for any injury to the improvement or occupancy of any lands assigned to individuals under this Article caused by the use of the surface by the lessee. Compensation so received shall be paid over to such individual so injured.

Document 29.

### Example 3

#### ARTICLE VIII - LAND

[Former Sections 1, 2, 3 and 4 repealed by Amendment No. III effective June 19, 1962.]

SECTION 1. In any assignment of tribal lands, preference shall be given to heads of families which are entirely landless. Assignments under this section shall be known as "home assignments" and shall be granted for the purpose of giving opportunity to homeless Indians for establishing a home. Any assignment under this provision shall not exceed ten (10) acres in area.

SECTION 2. If any person holding a "home assignment" of land shall for a period of six months fail to use the land so assigned or shall use the land for any unlawful purpose, his assignment may be cancelled by the tribal council after due notice and opportunity to be heard. Such land may then be available for reassignment.

Upon the death of any Indian holding a "home assignment" his heirs or other individuals designated by him by will or written request shall have preference in the reassignment of the land, provided such persons are eligible to receive a "home assignment."

SECTION 3. Any member of the Rosebud Tribe who owns an allotment of land or any share in heirship land or any deeded land, may, with the approval of the Secretary of the Interior, voluntarily transfer his interest in such land, including or excluding mineral rights therein, to the tribe and receive therefor an assignment in the same land or other land of equal value or he may receive a proportionate share in a unit of grazing land.

Assignments made under this section shall be known as "exchange assignments."

SECTION 4. A member receiving an "exchange assignment" shall receive the right to lease such assigned lands or interests under the same terms as governing the leasing of allotments.

SECTION 5. Upon the death of a holder of an "exchange assignment", such lands shall be reassigned by the tribal council to his heirs or devisees, subject to the following conditions:

(a) Such lands may not be reassigned to any heir or devisee who is not a member of the Rosebud Tribe, except that a life assignment may be made to the surviving spouse or child of the holder of such assignment.

(b) Such lands may not be reassigned to any heir or devisee who already holds more than 1920 acres of land on the reservation. [Amendment No. IV, effective June 19, 1962.]

(c) Such lands may not be subdivided into units too small for practical use. No area of grazing land shall be subdivided into units smaller than one hundred sixty (160) acres. No area of agricultural land shall be subdivided into smaller units than two and one-half (2-1/2) acres. When interests in assignments shall involve smaller areas than the amounts herein set out, the tribal council may issue to such heir or devisee a proportionate share in other grazing units or other interests in land of equal value.

(d) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for reassignment the same as other tribal lands.

SECTION 6. Improvements of any character made upon assigned land may be willed and inherited by members of the Rosebud Tribe. When improvements are made possible of fair division, the tribal council shall dispose of them under such regulations as it may provide. No permanent improvements may be removed from any tribal or assigned land without the consent of the tribal council.

SECTION 7. No member of the Rosebud Tribe may use or occupy tribal land except under assignment or lease.

SECTION 8. Unassigned land shall be managed by the tribal council for the benefit of the members of the entire tribe.

SECTION 9. Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land for the Rosebud Tribe.

SECTION 10. Applications for assignments of lands shall be made in writing. Such applications shall be submitted to the council at regular or special sessions. The application will be placed in the hands of a proper committee who will call the matter up for action at the next regular meeting of the council. Any member of the tribe may object in writing, to a proposed assignment. In the event of objection, the chairman of the council shall set a date for a hearing, advising both the applicant and the objector. The action of the council shall be final.

The secretary of the council shall furnish the superintendent or other officer in charge of the agency a complete record of all action taken by the council on applications for assignment

of land, and a complete record of assignments shall be kept in the agency office and shall be open for inspection by members of the tribe.

The council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

Document 20.

#### Example 4

### ARTICLE VIII - LAND

SECTION 1. Allotted land, including heirship lands, within the Bad River Reservation shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be condemned for public purposes, such as roads, public buildings, or other public improvements, upon payment of adequate compensation. It is further recognized that under existing law such lands may be inherited by the heirs of the present owners, whether or not they are members of the Bad River Band of the Lake Superior Tribe of Chippewa Indians. Likewise, it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State tax and may then be mortgaged and sold. The right of the individual Indian to hold or to dispose of his land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Bad River Band of the Lake Superior Tribe of Chippewa Indians either in exchange for money payment or in exchange for an assignment covering the same land or other land, as hereinafter provided.

SECTION 2. Tribal lands of the Bad River Band of the Lake Superior Tribe of Chippewa Indians and all lands which may hereinafter be acquired by the Bad River Band or by the United States in trust for the Bad River Band shall be held as tribal lands, and no part of such lands shall be mortgaged or sold.

SECTION 3. Tribal lands shall not be allotted to individual Indians, but such tribal lands as are not required for school, agency, or other administrative use may be assigned by the Tribal Council to members of the Bad River Band of the Lake Superior Tribe of Chippewa Indians or may be leased or otherwise used by the Band as hereinafter provided.

SECTION 4. Tribal lands may be leased by the Tribal Council with the approval of the Secretary of the Interior in accor-

dance with law. Preference shall be given, first, to cooperative associations of members of the Band, and, secondly, to individual Indians who are members of the Band. No lease of tribal lands to a nonmember shall be made by the Tribal Council unless it shall appear that no cooperative association of members or individual member of the Band is able and willing to use the land and to pay a reasonable fee for such use.

SECTION 5. In any assignment of tribal lands which are now owned by the Band, or which may hereafter be acquired for the Band by the United States or purchased by the Band out of tribal funds, or which may be designated for the use of the Band, preference shall be given, first to heads of families which are entirely landless, and second, to heads of families which have no allotted lands or interests in allotted lands, but shall have already received assignments consisting of less than an economic unit of agricultural land or other land or interests in land of equal value, such economic unit to be determined by the Tribal Council by ordinances. Such assignments shall be known as "standard assignments."

No member of the Band who may hereafter have the restrictions upon his land removed, and whose land may thereafter be alienated, except to the Band, shall be entitled to receive an assignment of land as a landless Indian.

The Tribal Council may, if it sees fit, charge a fee on approval of a standard assignment.

SECTION 6. If any person holding a standard assignment of land shall, for a period of 1 year, fail to use the lands so assigned, or shall use the land for any unlawful purpose, his assignment may be cancelled by the Tribal Council after due notice and opportunity to be heard. Such land may then be available for reassignment.

Upon the death of any Indian holding a standard assignment, his heirs or other individuals by him in writing have preference in the reassignment of the land, provided such persons are eligible to receive a standard assignment.

SECTION 7. Any member of the Bad River Band who owns an allotment of land or any share in heirship land or any deeded land, may with the approval of the Secretary of the Interior, voluntarily transfer his interest in such land, to the Band and receive therefor an assignment in the same land or other land of equal value or he may receive a proportionate share in a unit of agricultural or other lands.

Assignments made under this section shall be known as "exchange assignments."

SECTION 8. Exchange assignments may be used by the assignee or leased by him to cooperative associations of members of the Band, to individual members of the Band, or if no individual mem-

ber or cooperative association of members is able and willing to rent the land at a reasonable fee, such assignments may be leased to non-Indians, in the same manner as allotted lands.

SECTION 9. Upon the death of a holder of an exchange assignment such lands shall be reassigned by the Tribal Council to his heirs or devisees, subject to the following conditions:

(a) Such lands may not be reassigned to any heir or devisee who is not a member of the Bad River Band, except that a life assignment may be made to the surviving spouse or child of the holder of such assignment.

(b) Such lands may not be reassigned to any heir or devisee who already owns or holds more than an economic unit of land.

(c) Such lands may not be subdivided among heirs or devisees into units too small for convenient management, and no assignment shall be subdivided into units smaller than 2-1/2 acres, except that land used for buildings or other improvements may be divided to suit the convenience of the parties. Where it is impossible to divide the land properly among the eligible heirs or devisees, the Tribal Council may issue to the eligible heirs or devisees interests in tribal lands or property of the same value as the assignment of the decedent.

(d) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for assignment the same as other tribal lands.

SECTION 10. Improvements of any character made upon assigned land may be willed to and inherited by members of the Bad River Band. When improvements are not possible of fair division, the Tribal Council shall dispose of them under such regulations as it may provide, for the benefit of such heirs. No permanent improvements may be removed from any tribal or assigned land without the consent of the Tribal Council.

SECTION 11. No member of the Bad River Band may use or occupy tribal lands except under an assignment or lease.

SECTION 12. Tribal land which is not assigned, including tribal timber reserves, shall be managed by the Tribal Council for the benefit of the entire Band, and any cash income derived from such land shall accrue to the benefit of the Band as a whole. All action of the Tribal Council with respect to such lands shall be in conformity with departmental regulations for protection of Indian range and timber resources authorized by Section 6 of the Act of June 18, 1934.

SECTION 13. Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land for the Bad River Band.

SECTION 14. Applications for assignment of land shall be made in writing. Such applications shall be submitted to the Tribal Council at regular or special sessions. The application shall be placed in the hands of a proper committee who shall call the matter up for action at the next regular meeting of the Tribal



Council. Any member of the Band may object in writing to a proposed assignment. In the event of objection, the Chairman of the Tribal Council shall set a date for hearing, advising both the applicant and the objector. The action of the Council shall be final.

The Secretary of the Council shall furnish the Superintendent or other officer in charge of the agency a complete record of all action taken by the Tribal Council on applications for assignment of land, and a complete record of assignments shall be kept in the agency office and shall be open for inspection by members of the Band.

The Tribal Council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

Document 1.

#### Example 5

### ARTICLE VIII - LAND

SECTION 1. Allotted lands. - Allotted lands, including heirship lands, within the Cheyenne River Reservation shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be condemned for public purposes, such as roads, public buildings, or other public improvements, upon payment of adequate compensation, by any agency of the State of South Dakota or of the Federal Government, or by the tribe itself. It is further recognized that under existing law such lands may be inherited by the heirs of the present owner, whether or not they are members of the Cheyenne River Sioux Tribe. Likewise it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may then be mortgaged or sold.

The right of the individual Indian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in this constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey his land to the Cheyenne River Sioux Tribe either in exchange for a money payment or in exchange for an assignment covering the same land or other land, as hereinafter provided.

SEC. 2. Tribal lands. - The unallotted lands of the Cheyenne River Reservation and all lands which may hereafter be acquired by the Cheyenne River Sioux Tribe or by the United States in trust for the Cheyenne River Sioux Tribe shall be held as tribal lands, and no part of such lands shall be sold, except those tribal lands located outside of the Cheyenne River Reservation boundaries, and outside of

the Consolidation Area boundary lines established as of the date of the approval of Public Law 88-418 (August 11, 1964), and set out in tribal council action by Resolution No. 92-64 (September 2, 1964). Tribal lands shall not be mortgaged, nor allotted to individual Indians, but may be assigned to members of the Cheyenne River Sioux Tribe or leased or otherwise used by the tribe, as hereinafter provided.

SEC. 3. Leasing of tribal lands. - Tribal lands may be leased by the tribal council, with the approval of the Secretary of the Interior for public, religious, educational, recreational, residential, or business purposes for a period not to exceed 25 years and may include a provision authorizing a renewal or an extension for one additional term of not to exceed 25 years, but no one lease or contract shall be for a tract in excess of 160 acres.

Grazing permits covering tribal land may be issued by the tribal council, with the approval of the Secretary of the Interior. Such grazing permits shall not exceed a term of five years.

In the lasting of tribal lands and the issuance of grazing permits preference shall be given first to Indian cooperative associations, and, secondly, to individual Indians, who are members of the Cheyenne River Sioux Tribe. No lease of tribal land to a non-member or the issuance of a grazing permit to a non-member shall be made by the tribal council unless it shall appear that no Indian cooperative association or individual member of the tribe is able and willing to use the land and to pay a reasonable fee of such use.

SEC. 4. Grant of "standard" assignments. - In any assignment of tribal lands which are now owned by the tribe or which hereafter may be acquired for the tribe by the United States or purchased by the tribe out of tribal funds, preference shall be given, first to heads of families which are entirely landless, and, secondly, to heads of families which have no allotted lands or interests in allotted lands but shall have already received assignments consisting of less than an economic unit of agricultural land, or other land or interests in land of equal value, such unit to be determined from time to time by the tribal council.

The tribal council may, if it sees fit, charge a fee of not to exceed \$25 on approval of an assignment made under this section.

Assignments made under this section shall be for the primary purpose of establishing homes for landless Indians, and shall be known as "standard" assignments.

SEC. 5. Tenure of "standard" assignments. - If any member of the tribe holding a "standard" assignment of land shall, for a period of two (2) years, fail to use the land so assigned, his assignment may be cancelled by the tribal council after due notice and an opportunity to be heard, and the said land, may be reassigned in accordance with the provisions of section 4 of this article.

Upon the death of any Indian holding a "standard" assignment his heirs or other individuals designated by him, by will or by

written request shall have a preference in the reassignment of the land, provided such persons are members of the Cheyenne River Sioux Tribe who would be eligible to receive a "standard" assignment.

SEC. 6. Grant of "exchange" assignment. - Any member of the tribe who owns an allotment or any share of heirship land may voluntarily transfer his interest in such land in exchange for any assignment to the same land or other land of equal value. If the assignee prefers, he may receive, in lieu of a specific tract of land, a proportionate share in a larger grazing unit.

Assignments made under this section shall be known as "exchange assignments."

SEC. 7. Leasing of "exchange" assignments. - "Exchange" assignments may be used by the assignee or leased by him to Indian cooperative associations, to individual members of the tribe, or, if no individual Indian or Indian cooperative association is able and willing to rent the land at a reasonable fee, such assignments may be leased to non-Indians, in the same manner as allotted lands.

SEC. 8. Inheritance of "exchange" assignments. - Upon the death of the holder of any "exchange" assignment, such land shall be reassigned by the tribal council to his heirs or devisees, subject to the following conditions:

(a) Such lands may not be reassigned to any heirs or devisees who are not members of the Cheyenne River Sioux Tribe, except that a life assignment may be made to the surviving widower or widow of the holder of assignment.

(b) Such lands may not be reassigned to any heirs or devisees who already hold more than a certain number of acres of grazing land, or other land or interests in land of equal value, either under allotment or under assignment, such amounts to be determined from time to time by the council.

(c) Such lands may not be subdivided among heirs or devisees into units too small for convenient management. No area of grazing land shall be subdivided into units smaller than sixty (60) acres, and no area of agricultural land shall be subdivided into units smaller than two and one-half acres, except that land used for buildings or other improvements may be divided to suit the conveniences of the parties. Where it is impossible to divide the land properly among the eligible heirs or devisees, the tribal council shall issue to such heirs or devisees grazing permits or other interests in tribal lands of the same value as the assignments of the decedent.

(d) If there are no eligible heirs or devisees of the decedent, the land shall be eligible for reassignment in accordance with the provisions of section 4 of this article.

SEC. 9. Inheritance of improvements. - Improvements of any character made upon assigned land may be bequeathed to and inherited by members of the Cheyenne River Sioux Tribe or otherwise disposed

of under such regulations as the tribal council shall provide. No permanent improvements shall be removed from the land without the consent of the tribal council.

SEC. 10. Exchange of assignments. - Assignments may be exchanged between members of the Cheyenne River Sioux Tribe by common consent in such manner as the tribal council shall designate.

SEC. 11. Use of unassigned tribal land. - Tribal land which is not assigned, including tribal timber reserves, shall be managed by the tribal council for the benefit of the members of the entire tribe, and any cash income derived from such land shall accrue to the benefit of the tribe as a whole.

SEC. 12. Purchase of land by the tribe. - Tribal funds may be used with the consent of the Secretary of the Interior, to acquire land, under the following conditions:

(a) Land within the Cheyenne River Reservation or adjacent to the boundaries thereof which is now in Indian ownership may be purchased by or for the Cheyenne River Tribe.

(b) Restricted land, which is in heirship status at the time of the adoption and approval of this constitution, may be purchased by or for the tribe, with the consent of all the adult heirs, and the legal guardians of minor heirs, payment therefor to be made as may be agreed upon.

(c) Land owned by any member of the tribe who is over the age of sixty (60) years, or who is physically incapacitated, may be transferred by its owner to the tribe in exchange for a pension of not more than twice the usual rental value of the land for the life of the pensioner, to be paid out of available tribal funds.

(d) Land in excess of 320 acres owned by any member of the tribe may be purchased by the tribe, with the consent of the owner, payments to be made under such term as may be agreed upon.

(e) Land owned by any member of the tribe who desires to leave the reservation permanently may be purchased by the tribe, under such terms as may be agreed upon.

SEC. 13. Method of making assignments. - Applications for assignment shall be filed with the secretary of the council and shall be in writing, setting forth the name of the person or persons applying for the land and as accurate a description of the land desired as the circumstances will permit. Notices of all applications received by the secretary shall be posted by him in the agency office and in at least three conspicuous places in the district in which the land is located for not less than twenty (20) days before action is taken by the council. Any member of the tribe wishing to oppose the granting of an assignment shall do so in writing, setting forth his objections, to be filed with the secretary of the council, and may if he so desires appear before the council to present evidence. The secretary of the council shall furnish the superintendent or other officers in charge of the agency, a complete record of all

action taken by the council on applications for assignment of land, and a complete record of assignments shall be kept in the agency office and shall be open for inspection by members of the tribe.

The council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of the Interior.

Document 34

Example 6

ARTICLE VII- LAND

- Section 1. The Blackfeet Tribe may enact laws regarding the use of all lands within the Blackfeet Reservation.
- Section 2. Allotted lands, including heirship lands shall continue to be held as before by their owners. The right of the individual Indian to hold or to part with his or her land as under existing laws shall not be abrogated by anything contained in this Constitution, but will be subject to the rights of the Blackfeet Tribe or individual Tribal members to have the first preference to buy such lands. It is recognized that such lands may be condemned for public purposes upon adequate compensation by the Blackfeet Tribe. It is further recognized that such allotted lands may be inherited by the heirs of the present owner only if such heirs are of Blackfeet descent.
- Section 3. (a) As of the date of this Constitution, no trust land presently held by Tribal members shall ever be devised to, sold to, given to, inherited by, or in any other manner come into the possession of any person not of Blackfeet Indian descent as long as such land remains in trust status.
- (b) As of the date of this Constitution, no other land presently held by Tribal members shall be devised to, sold to, given to or in any other manner come into the possession of any person not of Blackfeet Indian descent without the owner of such lands giving the opportunity to the Blackfeet Tribe or the members of that Tribe to meet the high bid for that land within a reasonable time.
- (c) All sales of land within the Blackfeet Reservation must be advertised in local newspapers for a period of thirty (30) days before such sale.
- Section 4. The unallotted lands of the Blackfeet Tribe and all lands hereafter acquired by the Blackfeet Tribe, or held for the use of the Blackfeet Tribe, including Tribal Timber Reserve, shall be held as Tribal lands, and no part of such lands shall ever be sold.

- (a) Only lands being purchased, or the income from such lands may be mortgaged or used as collateral for the purchase of that land.
- (b) Tribal lands may be leased but not traded. The Big Council shall make laws regulating the leasing and subleasing of Tribal lands.
- (c) The lands known as Agency Reserve lands shall return to the status of Tribal lands as of the date of this Constitution.
- (d) The Blackfeet Tribe shall urge the return of the land known as Sub-Marginal lands to the status of Tribal lands.
- (e) The Blackfeet Tribe shall urge the return to trust status of any fee patent land they now hold or may acquire in the future.

Section 6. The Blackfeet Tribe shall deposit twenty-five percent (25%) of all annual income for the purpose of purchasing land, timber rights, mineral rights and water rights within, or adjacent to the Blackfeet Reservation. This money is not to be used for administrative costs of maintaining such purchase program.

Section 7. Heirship land may not be divided into portions having a monetary value of less than \$100. The Blackfeet Tribe shall compensate those affected by this section and such portion shall become Tribal land.

Section 8. An Indian heir may gift deed, sell, trade or convey in trust his or her interest in heir ship land to another Indian heir holding interest in the same land.

Section 9. In areas set aside or zoned for homesites, any individual may apply for a twenty-five year homesite least not to exceed two and one-half (2 1/2) acres of land.

- (a) Laws regulating homesite leases may be made by the Big Council.
- (b) Leases may be transferred to another member with the approval of the Big Council or its designate.
- (c) Disputes concerning these leases shall be taken to the appropriate Court of the Blackfeet Tribe.

Section 10. As of the date of this Constitution, individuals holding standard assignments shall surrender all rights given to them regarding these assignments to the Blackfeet Tribe and shall be given the first option to lease such according to the laws regulating such leases.

Section 11. No right of way may be granted over Tribal land without the approval of the Blackfeet Tribe and no right of way shall be granted over other land on the Blackfeet Reservation without the approval of the individual land owner. If such right of way is granted over any land on the Blackfeet Reservation the land owner shall be adequately compensated for the grant of such right of way.

Document 31

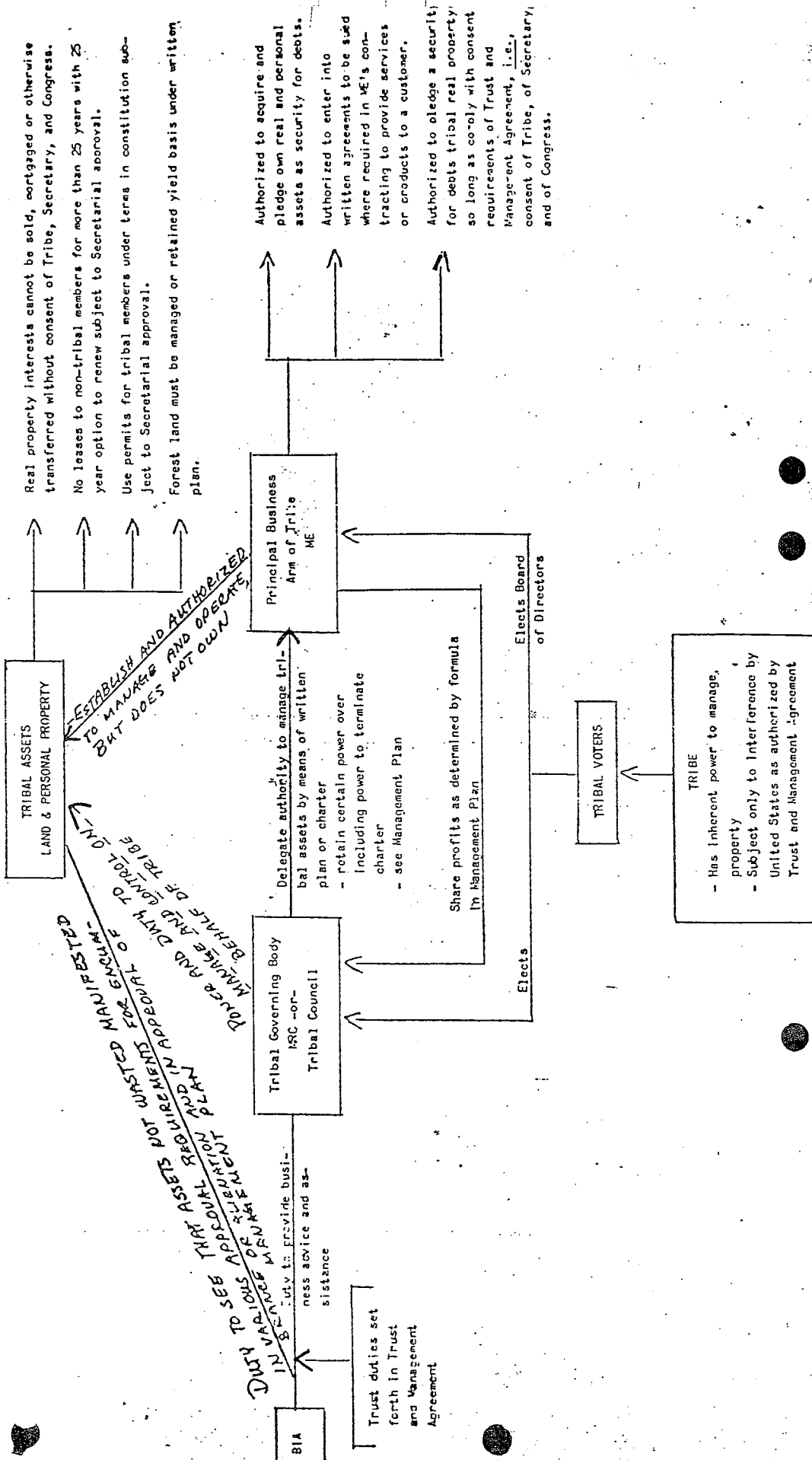
Example 7

ARTICLE X - RESERVATION LAND

SECTION 1. The reservation land shall as a whole remain tribal property and shall not be divided by allotment of any parts to individuals or groups of individuals as private property that could be sold at will; but assignments of land for private use may be made by the Council in conformity with ordinances which may be adopted on this subject, provided, that the rights of all members of the tribe be not violated.

Document 39

Management Limitations Set Forth  
In the Trust and Management Agreement





# Native American Rights Fund

## MEMORANDUM

TO: The Menominee Restoration Committee

FROM: Yvonne T. Knight

DATE: October 13, 1975

RE: Advantages And Disadvantages Of Adopting A Constitution Under Section 476 Of The Indian Reorganization Act (See Attachment A) [Revision of memorandum to Constitution and Bylaws Subcommittee dated September 16, 1974 and included in Menominee Constitution Handbook as Part IV.]

### I. INTRODUCTION

#### A. General Background of Indian Reorganization Act.

Generally, the Indian Reorganization Act (IRA) enacted in 1934 is considered to be one of those acts which signified a major reversal of government policy and approach toward Indian Affairs. Prior to the enactment of the IRA in 1934, the Bureau of Indian Affairs, through delegation of power from the Secretary of Interior, exercised almost unlimited discretion over tribal affairs, including tribal decisions. (25 U.S.C. §2; 25 C.F.R. §1). The extent of the BIA's discretionary powers over Indian tribes is indicated in the following passage from a recent law review article.

Perhaps the prime objective of the IRA, which was crucial to any effective establishment of self-government, was elimination of the "absolutist" executive discretion previously exercised by the Interior Department and the Office of Indian Affairs. During the hearings, Commissioner of Indian Affairs, John Collier, presented to the House Committee examples which revealed the vastness of this discretionary power. Not only had administrative power grown beyond control, but its exercise and the effects of its exercise also changed from year to year, depending on the attitude or whim of a given commissioner. Further, this discretionary power was also exercised by local agency superintendents, a situation that led Senator Wheeler to refer to the local agent as "a czar". So all-encompassing was this power that "the Department [had] absolute discretionary powers over all organized expressions of the Indians... [t]ribal councils exist [ed] by [the Department's] sufferance and [had] no authority except as... granted by the Department." Consequently, the IRA sought to eliminate this boundless discretion or at least place a damper on its exercise. "This bill... seeks to get away from the bureaucratic control of the Indian Department, and it seeks further to give the Indians the control of their own affairs..." ["Tribal Self-Government and the Indian

Reorganization Act of 1934," 70 Mich. L. Rev.  
955, 966 (1972)].

Thus, the provisions of the IRA generally are designed to impose limitations upon the previously unfettered discretionary powers of the Secretary of Interior and the BIA. Leaving aside for the moment §476, the following are some of the areas in which the IRA limits the Secretary's powers:

- 1) 27 U.S.C. §461 of the IRA prohibits allotment. Theoretically the lands of non-IRA tribes could still be allotted. Allotment of lands of IRA tribes, however, is strictly and specifically prohibited.
- 2) §462 extends the trust period of Indian lands indefinitely. Some non-IRA tribes currently are compelled to obtain periodic executive orders extending the trust period.
- 3) §464 prohibits the "sale, devise, gift, exchange, or other transfer of restricted Indian lands...." Again, theoretically, restricted lands of non-IRA tribes could be sold, devised, etc. by the Secretary.
- 4) §465 provides tax exempt status for lands acquired under the Act. Non-IRA tribes must obtain tax exemption through special legislation for any lands subsequently acquired.
- 5) In addition to these limitations on the Secretary's powers, a tribe organized under the IRA has access to certain funds and programs not otherwise available.

B. Application to the Menominee Tribe.

The Indian Reorganization Act (IRA) is codified in the United States Code in Title 25, Sections 461 through 486. 25 U.S.C. §478 provides that the IRA "shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of Interior, shall vote against its application." The Secretary was given one year, from June 18, 1934, to hold elections on the various reservations in which Indian people could vote upon the applicability of the IRA to their reservation. Thus, within one year after the passage of the IRA, tribal elections were held and the IRA was either accepted or rejected. The Menominee Tribe voted to accept the IRA and §3 of the Menominee Restoration Act specifically states that the IRA is applicable to the tribe.

It is important to note here, however, that certain provisions of the IRA, although available for the use of a tribe which has accepted the act, are made expressly optional. One of these optional provisions is 25 U.S.C. §476 which authorizes a tribe, if it so chooses, to organize and adopt a written constitution and bylaws under that section. On the other hand, a tribe may choose to organize and adopt a constitution and bylaws, outside the authority of §476 of the IRA. To aid the Menominee Tribe in making this choice, the next section of this memorandum will discuss the advantages and disadvantages of organizing pursuant to §476 of the IRA.

II. ADVANTAGES AND DISADVANTAGES OF ORGANIZING THE  
MENOMINEE GOVERNMENT PURSUANT TO A CONSTITUTION  
ADOPTED UNDER SECTION 476 OF THE IRA

A. Advantages.

Again, in order to appreciate the advantages which §476 affords to tribes which organize under it, one must first appreciate the great range of discretionary powers exercised by the BIA over the affairs of Indian tribes prior to the passage of the IRA. Briefly, these powers extended even to the control of decisions affecting tribal self-government. One should also keep in mind that §476 like the other provisions of the IRA was intended to take from the BIA certain of these discretionary powers and to vest those powers back in the Indian tribes.

The following is a brief discussion of the four major advantages afforded by §476 of the IRA to tribes which organize under that section:

1. As a background to a discussion of the first major advantage of §476, it is necessary to realize that the Secretary of the Interior on behalf of the federal government has the power to approve tribal constitutions. By doing so, the Secretary thereby designates the tribal government and tribal officials which the federal government will recognize and deal with as the official tribal representatives. Outside of §476, The Secretary has the discretionary power to unilaterally approve, or revoke his approval, of a tribal constitution, without considering the wishes of the tribe. Clearly, it is important that a tribe have the security of knowing that the Secretary cannot unilaterally withdraw his favor from one tribal government and its tribal officials and bestow it on another, that is without the tribe's consent. Thus, §476 of the IRA states that once a tribal constitution has been adopted by a tribe pursuant to an election conducted under that section, and the Secretary has approved it, the Secretary cannot revoke federal recognition of that tribal constitution, only the tribe at an election conducted in the same manner as when the constitution was adopted can revoke the §476 constitution.
2. Tribes organized outside of §476 must comply with the requirements of 25 U.S.C. §81 when they enter into a contract to employ legal counsel. Section 81 in addition to its several requirements for such

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a contract has also been interpreted as granting the Secretary of the Interior and the Commissioner of Indian Affairs broad powers of approval of all the terms of that contract. In contrast, §476 limits the approval powers of the Secretary and the BIA to "the choice of counsel and fixing of fees," thus, presumably leaving all other terms of the contract to negotiation solely between the tribe and the lawyer.

3. Tribes organized outside §476 theoretically are subject to the power of the Secretary to sell, lease, dispose or encumber tribal land or other tribal assets when the Secretary deems appropriate without seeking tribal consent. In §476, Congress has authorized tribes in their constitutions to prohibit the Secretary from selling, disposing of, leasing, or encumbering tribal lands or other assets without first obtaining the consent of the tribe. Presumably, the tribal constitution could be drafted so as to make such consent extremely difficult to obtain. This particular advantage of §476, however, may be repetitious insofar as the Menominees are concerned because the same prohibition is set forth in the Trust Agreement negotiated between the Menominee Tribe and the Secretary.
4. 25 U.S.C. §472 of the IRA imposes a duty upon the Secretary of the Interior to give preference to "Indians" in employment in the Bureau of Indian Affairs. One crucial question which arises in enforcing §472 is this: Who is an "Indian" within the meaning of §472 and therefore entitled to BIA employment preference? A recent opinion issued early in 1975 by the Associate Solicitor for Indian Affairs of the Department of Interior essentially concludes that insofar as Tribes organized under 25 U.S.C. §476 of the IRA are concerned "Indians" within the meaning of 25 U.S.C. §472 are tribal members as defined by the Tribe in its Constitution. However for all other Tribes, "Indian" within the meaning of 25 U.S.C. §472 are those persons who meet the requirements established by regulations of the Bureau of Indian Affairs even though those requirements may be different from the requirements for membership in the Tribe involved. Currently the BIA requires that a member of a federally recognized tribe not organized under 25 U.S.C. §476 be at least 1/4 degree Indian in order to receive employment preference

under 25 U.S.C. §472. This, of course, is consistent with the membership requirements of most federally recognized Tribes. However, there would be a great problem created for federally recognized tribes not organized under §476 which have members of 1/4 degree blood quantum if the BIA sometime in the future decided to raise the blood quantum requirement to something higher than 1/4 degree. In such an event, all members of tribes who have 1/4 degree Indian blood would not be eligible for BIA employment preference even though the tribe itself recognizes them for all purposes as members of the tribe.

In summary then, members of Tribes organized under §476 of the IRA are entitled to BIA employment preference under 25 U.S.C. §472 simply because they are members of the Tribe. But members of tribes not organized under §476 must meet the definitional requirements established by the BIA as to who is an Indian and thus entitled to BIA employment preference, even if such requirements are different from membership requirements of the tribe.

#### Disadvantages.

Section 476 does not appear to impose upon tribes which organize under it any additional disadvantages vis a vis the federal government, in terms of tribal decisions being subject to Secretarial and BIA approval powers, than is borne by tribes generally under federal law based upon the trust relationship between the United States and Indian tribes. Much of the disillusionment with tribal constitutions adopted under §476 appears to stem, not from anything inherent in the section itself, but from the fact that many tribes adopted constitutions which contained provisions granting the Secretary power to approve virtually all major tribal decisions. Many tribal constitutions adopted pursuant to §476 appear to have been based upon the same model constitution, probably BIA drafted.

### III. REQUIREMENTS FOR ADOPTION AND AMENDMENT OF IRA CONSTITUTIONS AND BYLAWS

The only requirement imposed on Tribes who organize, that is, adopt a Constitution and Bylaws, under 25 U.S.C. §476 of the IRA is that the manner of adopting and amending the Constitution and Bylaws will be subject to federal law and regulations, and not tribal law. 25 U.S.C. §478 a of the IRA states that in "adopting a constitution and bylaws or amendments thereto" under §476 "the vote of a majority of those actually voting shall be necessary and sufficient to effectuate such adoption....: Provided, however, that in each instance the total vote cast shall not be less than 30 percentum of those entitled to vote."

October 13, 1975

Thus the election held to adopt a §476 constitution and bylaws a federal election governed also by any regulations issued by the Secretary of the Interior. Similarly, any election held to amend a §476 constitution and bylaws will be a federal election subject to the Secretary's regulations.

The adoption of the Menominee's tribal constitution is, of course, governed by Section 5 (d) of the Menominee Restoration Act and mandates a federal election be held to adopt the Menominee Tribal Constitution. The requirements for adoption of the Menominee Constitution are exactly the same as those required to adopt a §476 constitution under the IRA.

Thus insofar as the Menominee Tribe is concerned, the only requirement imposed by the IRA is the following: Amendments to the Menominee Constitution would be adopted at a secretarial election by a vote of a majority of eligible tribal voters voting, if at least thirty percent (30%) of all eligible tribal voters vote.

#### IV. CONCLUSION

Briefly then, there are four advantages to organizing a tribal government under a constitution adopted pursuant to §476 of the IRA; first, it affords a congressionally approved method of electing a tribal constitution and once a tribe has so elected a constitution, the Secretary is prohibited from revoking it; only the tribe can revoke it through the same election process; second, with the exception of the choice of attorney and the fee charged, all other terms of tribal contracts with attorneys are not subject to the approval of the Secretary; third, the Secretary is prohibited from selling, encumbering, leasing or disposing of tribal lands and assets without first obtaining the consent of the tribe; and fourth, members of the Tribe are entitled to BIA employment preference, notwithstanding the BIA's definition of who is an "Indian" and thus entitled to BIA employment preference.

The question which arises from a consideration of the above listed advantages is this: Are the above advantages offered by §476 sufficiently important to persuade the Menominee Tribe to choose to organize pursuant to §476? At this point in the history of the relationship between Indian tribes and the federal government - which might be termed the Indian self-determination period - it is very unlikely that the Secretary of Interior would unilaterally exercise his broad discretionary powers over tribal self-government with the same abandon he did several years ago. However, perhaps §476 should be viewed as an additional provision in an insurance policy designed to afford the tribe some protection against possible future attempts at federal encroachment on tribal self-government. As the Menominee Tribe well knows, federal Indian policy is, and has historically been, subject to sudden and sometimes disastrous changes caused by the shifting winds of federal politics.

§476. Organization of Indian tribes; constitution and bylaws; special election

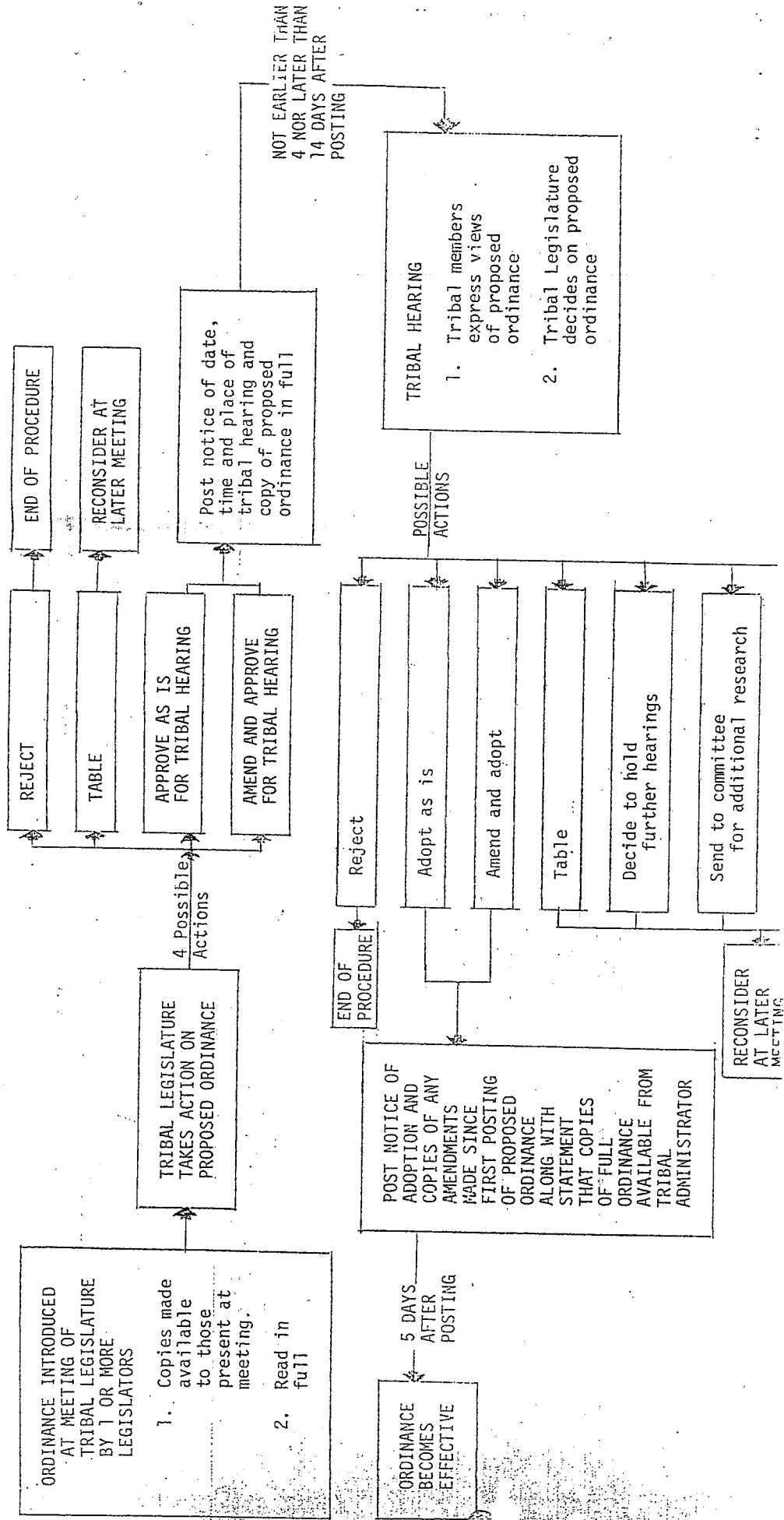
Any Indian tribe, or tribes, residing on the same reservation all have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters and conducted in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following right and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress. June 18, 1934, c. 576, §16, 48 stat. 987.

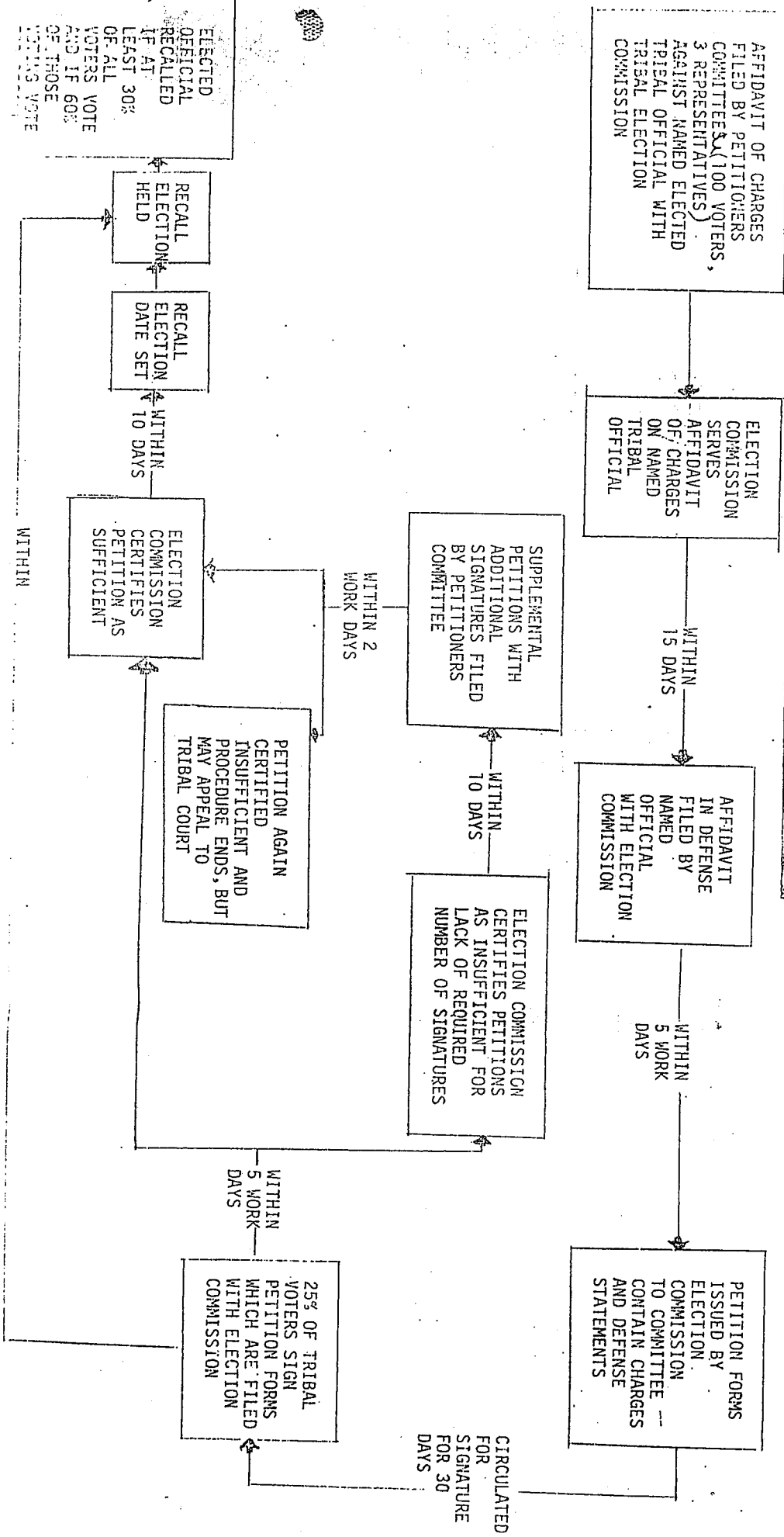
- (5) Any arrangement permitting non-tribal members to use tribal lands or interests in land shall be subject to the approval of the Tribe by majority vote of tribal members voting, and to the approval of the Secretary of the Interior.

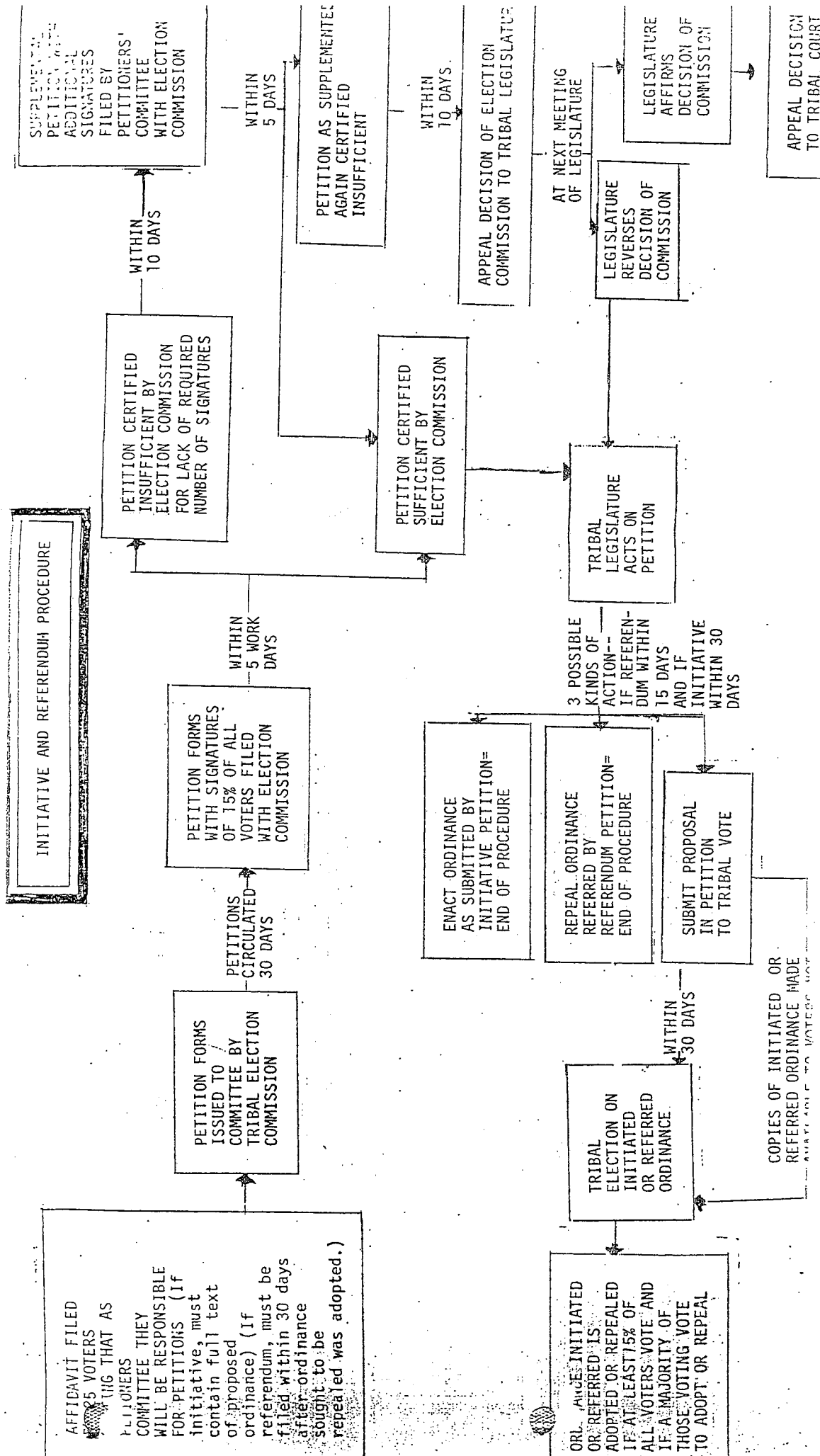


# HOW AN ORDINANCE IS ADOPTED BY THE TRIBAL LEGISLATURE



RECALL PROCEDURE





## POWERS OF THE GOVERNING BODY

### I. CONSIDERATIONS

The major purpose for this article is to define those tribal powers which the governing body is authorized to exercise. Thus, the major question to be answered with regard to this article is this: what scope of tribal powers should the governing body be authorized to exercise? There are two alternative answers to this question: First, the governing body may be authorized to exercise any and all power now vested in, or which in the future may be vested in, the Tribe, except as limited by the tribal constitution. Second, the governing body may be authorized to exercise only certain enumerated tribal powers with all other powers, including future tribal powers, reserved to the members of the Tribe. The tribal members may, by future constitutional amendments, authorize the governing body to exercise certain of these reserved powers.

#### A. Advantages and Disadvantages of the First Alternative: A General Grant of Powers.

The major advantage of the first approach is that it allows the tribal policy makers, i.e., the governing body, a broad choice of powers which they may use to serve the needs of the tribal members. It allows the governing body to be flexible and innovative in responding to present needs of the tribe. And particularly, it allows the council to respond quickly to future needs, unforeseeable at the time the constitution is drafted, without having to go through the difficulty of amending the constitution in order to obtain a grant of power allowing the council to act.

If the first approach is chosen, however, care must be taken to draft into the constitution sufficient checks and balances to make it extremely difficult for the governing body to abuse its grant of powers. There are several protections against the abuse of power by public officials which can be drafted into the Constitution. Unscrupulous public officials may be removed from office by vote of the tribal members under the recall procedure. Tribal councilmen may also be removed from office by their fellow councilmen for abuse of power, subject perhaps to a referendum of the tribal members. Likewise, the judges of the court may be removed by the tribal council for abuse of power. Certain kinds of tribal council actions can be required to be submitted to a referendum vote before such action can be effective. Tribal members can be authorized to initiate a referendum on any council action. The chief executive (if any) can be granted the power to veto acts of the council, and the council can be granted approval power over some or all acts of the chief executive (if any). In addition, the ability to totally exercise tribal powers can be divided among two or more branches of government. Such a division operates to prevent the most far reaching kind of abuse of power which can occur when tribal officials

have the authority not only to make laws, but also to enforce them, and to decide themselves whether their actions are in accordance with the tribal constitution. Finally, specific limitations, upon the general grant of power to the council, can be drafted into the constitution-provisions which specifically forbid the council from taking certain actions, at least without a tribal referendum. Such a provision might, for example, prohibit the council from selling tribal land without a vote of the tribe approving such a sale.

B. Advantages and Disadvantages of the Second Alternative: A Grant of Enumerated Powers.

It is generally stated that the major advantage of this approach is that it limits the scope of powers granted to the governing body, and by so doing, it limits the scope of opportunities for tribal officials to abuse power. However, this advantage appears to be largely illusory in light of the fact that most tribal constitutions have enumerated powers, as has the United States Constitution, yet abuses of power have still occurred or at least been charged. Perhaps the ultimate point is that a grant of power no matter how limited is still a grant of power and if the person authorized to exercise that power is unscrupulous and has the opportunity and motivation that grant of power will likely be abused. As discussed in more detail in section A above, there are various ways to lessen the possibility of abuses of power by drafting into the constitution provisions designed to provide checks upon the exercise of tribal power by tribal officials.

The major disadvantage of the enumerated powers approach is that those powers not granted to the governing body of the Tribe cannot, so long as they are reserved, be of any benefit to the Tribe. A tribal power is useless unless someone is authorized to exercise it for the tribe's benefit. A second disadvantage is that enumerated powers will not include powers which may be returned to tribes in the future by the federal government. For example, in P.L. 280, full civil and criminal jurisdiction may be returned to tribes either by retrocession or by federal legislation. If the power provisions of the tribal constitutions are not broad enough to authorize the tribal council to exercise the new tribal powers, the constitutions must be amended to do so. This is usually a time consuming and difficult job. It may in fact pose an obstacle to a speedy return to the tribe of full jurisdiction. Finally, enumerating powers creates the risk that some necessary or desirable powers will be overlooked or that unforeseeable tribal problems will arise in the future which will require that the council have certain powers other than those enumerated to deal with the situation. Again, amending the Constitution to grant the council those powers will be time consuming and difficult.

C. Conclusion.

The tribe would be well advised to draft a powers article based upon the first approach, that is, to authorize the governing body to

exercise any and all tribal powers including powers which may be vested in the tribe in the future by federal law. In conjunction with this general grant, other protective provisions such as suggested previously would be drafted.

## II. SUGGESTED PROVISIONS: POWERS OF THE TRIBAL GOVERNING BODY

### A. One Branch.

If the governing body is not divided into branches with separate powers, the following provisions is suggested:

#### POWERS OF THE TRIBAL COUNCIL

All powers of the Tribe shall be vested in a tribal council, including such powers as may in the future be granted to the Tribe by federal law, except as limited by this Constitution. [A description of the composition, qualifications, duties, etc., of the tribal council may be included here or in a separate article.]

### B. Two Separate Branches.

If the governing body consists of two separate branches - tribal court and tribal council with no separate executive branch, the following provisions are suggested:

#### POWERS OF THE TRIBAL COUNCIL

All legislative and executive powers of the Tribe shall be vested in a tribal council, including such powers as may in the future be granted to the Tribe by federal law, except as limited by this constitution. [A description of the composition and duties of the council may be included here or put in a separate article.]

#### POWERS OF THE TRIBAL COURT

All judicial powers of the Tribe shall be vested in a tribal judiciary, including such powers as may in the future be granted to the Tribe by federal law, except as limited by this constitution. [A description of the composition and duties of the tribal court may be included here or put in a separate article.]

### C. Three Branches.

If the governing body consists of three separate branches - tribal court, tribal council and tribal executive, the following provisions are suggested:

## POWERS OF THE TRIBAL COUNCIL

All legislative powers of the Tribe shall be vested in a tribal council, including such powers as may in the future be granted to the tribe by federal law, except as limited by this constitution. [A description of the composition and duties of the council may be included here or put in a separate article.]

## POWERS OF THE TRIBAL EXECUTIVE

The executive power shall be vested in a tribal chairman of the Tribe, except as limited by this constitution. [A description of the duties, qualifications, etc., of the chairman may be included here or in separate article.]

## POWERS OF THE TRIBAL COURT

All judicial powers of the tribe shall be vested in a tribal judiciary, including such powers as may in the future be granted to the tribe by federal law, except as limited by this constitution. [A description of the composition and duties of the tribal court may be included here or put in a separate article.]

## III. EXAMPLES OF ARTICLES MAKING A GENERAL GRANT OF POWERS TO GOVERNING BODIES

### Example 1

#### Section 3.1 - Council Powers:

The legislative affairs of the City shall be vested in a Council consisting of seven (7) Councilmen. The Council shall constitute the governing body of the City, and shall have all municipal powers including, without limitation, all powers as conferred by general law except as limited by this Charter, and shall have the power and authority to adopt such laws, ordinances and resolutions as it shall deem proper in the exercise thereof.

Document 22

### Example 2

#### Section 4.1 - The Council:

The legislative affairs of the City shall be vested in a Council consisting of seven councilmen all of whom shall be nominated and elected at large from the City.

#### Section 4.2 - Powers of Council:

The Council shall have all municipal powers, including without limitation, all powers as conferred by general law except as limited by this Charter. The Council, or a committee thereof duly authorized by it, shall have power to investigate the official acts and conduct of any officers of the City, and may compel the attendance and testimony of witnesses and the production of books and documents.

Document 23

#### IV. EXAMPLES OF ARTICLES MAKING GRANTS OF ENUMERATED POWERS TO GOVERNING BODIES

##### Example 1

SECTION 1. The Council shall have the following powers, subject to any limitation imposed by the statutes or by the Constitution of the United States.

(a) To negotiate with federal, state and local governments on all matters affecting the welfare of the members of this organization.

(b) To employ legal counsel, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior.

(c) To veto the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets.

(d) To adopt ordinances, which will be subject to approval by the Secretary of the Interior, providing for the use of tribal lands and the removal from the reservation of non-members whose presence or activities may be deemed injurious to the welfare of the tribe.

(e) To advise with representatives of the Department with regard to all appropriation estimates or Federal projects for the benefit of the reservation prior to admission of such estimates to the Bureau of the Budget and the Congress.

(f) To regulate its own procedure, to appoint boards or commissions, and to delegate to such subordinate agencies such powers as may be necessary in the performance of the duties assigned to them, reserving the right to review any action taken by virtue of such delegated power.

SEC. 2. The St. Croix Council may exercise, subject to popular referendum, such powers as may in the future be delegated to the St. Croix Chippewa Indians of Wisconsin by the Secretary



of the Interior, or by any duly authorized official or agency or the Government.

Document 5

Example 2

SECTION 1. Enumerated powers. - The Tribal Council shall exercise the following powers, subject to any limitations imposed by the Constitution or statutes of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached By-laws:

(a) To negotiate with the Federal, State, and local governments on behalf of the Band, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(b) To employ counsel for the protection and advancement of the rights of the Band and its members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(c) To approve or veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands or other tribal assets, which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other official or agency of government, provided that no tribal lands shall ever be sold or encumbered, or leased for a period exceeding 10 years, except for governmental purposes, except that leases for mining purposes may be made for such longer periods as may be authorized by law.

(d) To advise with the Secretary of the Interior with regard to all appropriation estimates or federal projects for the benefit of the Band prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(e) To make assignments of tribal land to members of the Band in conformity with Article VIII of this Constitution.

(f) To manage all economic affairs and enterprises of the Band in accordance with the terms of the charter which may be issued to the Band by the Secretary of the Interior.

(g) To appropriate for public purposes of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin available Tribal Council funds, and, subject to review by the Secretary of the Interior, any other available tribal funds.

(h) To levy taxes upon members of the Band and to require the performance of labor in lieu thereof, and to levy taxes or license fees, subject to review by the Secretary of the Interior, upon non-members doing business within the reservation: Provided, however, That any such assessment upon members of the Band shall have the approval of a majority of the voters of the Band at a special election at which at least 30 percent of the eligible voters of the Band shall vote.

(i) To purchase lands of members of the Band for public purposes, under condemnation proceedings in courts of competent jurisdiction.

(j) To safeguard and promote the peace, safety, morals, and general welfare of the Band by regulating conduct of trade and the use and disposition of property upon the reservation: Provided, That any ordinance directly affecting non-members of the Band shall be subject to review by the Secretary of the Interior.

(k) To regulate the inheritance of property, real and personal, other than allotted lands, within the territory of the Bad River Reservation, subject to review by the Secretary of the Interior.

(l) To regulate the manner of making nominations and holding elections for tribal officers.

(m) To adopt resolutions regulating the procedure of the Tribal Council itself and of other tribal agencies and tribal officials.

(n) To encourage and foster the arts, crafts, traditions, culture, wildlife, and natural resources of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin.

(o) To charter subordinate organizations for economic purposes, and to regulate the activities of cooperative associations of members of the Bad River Band of the Lake Superior Tribe of Chippewa Indians by ordinance, provided that any such ordinance shall be subject to review by the Secretary of the Interior.

(p) To select delegates to sit in a National Council of the entire Chippewa Nation.

(q) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Bad River Band, and of non-member Indians residing on the reservation, providing for the maintenance of law and order, and providing for the administration of justice by establishing an Indian Court and defining its duties and powers.

(r) To consolidate inherited land holdings by purchase, exchange, transfer, gift, or voluntary relinquishment, including the power to reassign same in the public interest.

(s) To exclude from the restricted lands of the reservation, persons not legally entitled to reside thereon, under ordinances which shall be subject to review by the Secretary of the Interior.

(t) To regulate hunting and fishing on tribal and restricted lands.

(u) To delegate to subordinate boards, or tribal officials, or to cooperative associations, that are open to all members of the tribe, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

SEC. 3. Future powers. - The Tribal Council may exercise such further powers as may in the future be delegated to the Band by the Secretary of the Interior, or by any duly authorized official or agency of the State of Federal Government.

SEC. 4. Reserved powers. - Any rights and powers heretofore vested in the Bad River Band, but not expressly referred to in this Constitution, shall not be abridged by this Article, but may be exercised by the people of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin through the adoption of appropriate By-laws and Constitutional Amendments.

Document 1